

## TRANSFEREES' EXHIBIT 18

### Request For Waiver

The Tribune Employee Stock Ownership Plan as implemented through the Tribune Employee Stock Ownership Trust, EGI-TRB, L.L.C., and Sam Zell (collectively the “Transferees”), proposed transferees of Channel 39 Inc., licensee of television station WSFL(TV), Miami, Florida (“WSFL”), hereby request a temporary waiver of Section 73.3555(d), the newspaper-broadcast cross-ownership rule (the “Rule”), pending completion of the ongoing Commission rulemaking addressing the Rule.<sup>1</sup> Transferees request this temporary waiver of the Rule to permit the common ownership of WSFL, the seventh-ranked television station in the Miami-Ft. Lauderdale DMA, and the *South Florida Sun-Sentinel* (the “*Sun-Sentinel*”), a daily newspaper published in Ft. Lauderdale. The Commission previously has granted a temporary waiver pending completion of the cross-ownership rulemaking to permit this common ownership, and reaffirmed it on several occasions.<sup>2</sup> The Commission should reaffirm the waiver to permit the Transferees to acquire control of Tribune, especially where the Commission eliminated the Rule in 2003, and the United States Court of Appeals for the Third Circuit upheld that elimination in 2004. Three years later, in a large and diverse media market, Tribune Company (“Tribune”) must be permitted to maintain its ability to broadcast and publish

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<sup>1</sup> The Rule, adopted in 1975, provides that “[n]o license for [a] . . . TV broadcast station shall be granted to any party . . . if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: [t]he Grade A contour of a TV station . . . encompassing the entire community in which such newspaper is published.” 47 C.F.R. § 73.3555(d)(3)(2002). In its *Further Notice of Proposed Rulemaking*, 21 FCC Rcd. 8834 (2006) (“*FNPRM*”), see *infra* n.12, the Commission is reviewing the cross-media limits that were adopted when the Rule was repealed in 2003.

<sup>2</sup> See *infra* at 2-3.

news in the South Florida market pending completion of the FCC's extended proceedings to establish relaxed cross-ownership limits.

WSFL is only the seventh-ranked station in its DMA, and operates in one of the most diverse and competitive media markets in the United States. From the time it came under common ownership with the *Sun-Sentinel* in 1996, the already-abundant sources from which the public can obtain local news and information in South Florida have multiplied. Common ownership of WSFL and the *Sun-Sentinel*, the second-ranked newspaper in WSFL's service area in terms of circulation, has caused no measurable diminution to diversity in the market, and has resulted in the establishment of a new newscast in the market. Under any applicable standard, the Transferees are entitled to a temporary waiver of the Rule until the Commission completes its review of the Rule, and that action becomes a final order no longer subject to judicial review.

## **I. Introduction and Summary**

Channel 39, Inc., the licensee of WSFL, is wholly-owned by Tribune Television Company, which is a wholly-owned subsidiary of Tribune Broadcasting Company. Tribune Broadcasting Company in turn is wholly-owned by Tribune. In 1996, Tribune agreed to acquire Renaissance Communications Corporation, owner of six television stations including WSFL (then operating under the call sign WDZL(TV)). Because Tribune already owned the *South Florida Sun-Sentinel*, the Commission granted Tribune a temporary 12-month waiver of the Rule.<sup>3</sup> Subsequently, the Commission extended Tribune's temporary waiver pending completion of the Commission's 1998 Biennial Review of the Rule, conditioned on a provision

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<sup>3</sup> See *Stockholders of Renaissance Communications Corporation*, 12 FCC Rcd. 11866, 11890 (1998), *aff'd sub. nom. Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998).

that Tribune would operate WSFL and the *Sun-Sentinel* separately, including specifically separate news operations.<sup>4</sup>

Upon completion of the *1998 Biennial Regulatory Review*, the Commission indicated that it would initiate a rulemaking proceeding to consider modifications to the Rule.<sup>5</sup> Accordingly, the Commission granted Tribune a further temporary waiver pending the outcome of that promised rulemaking.<sup>6</sup> Thus, Tribune has an existing temporary waiver of the Rule pending final action on the Commission's current rulemaking proceeding addressing the Rule.

The Commission eliminated the Rule in 2003, and as the Third Circuit emphatically stated, the "Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."<sup>7</sup> The Third Circuit also held that reasoned analysis supported the Commission's conclusion that the blanket cross-ownership ban was "no longer in the public interest" because newspaper-broadcast combinations actually "can promote localism."<sup>8</sup> The Commission, affirmed by the Court, found

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<sup>4</sup> See *Stockholders of Renaissance Communications Corporation*, 13 FCC Rcd. 4717 (MMB 1998). The extension of the waiver was explicitly conditioned on Tribune's promise "not to engage in any joint advertising sales or any joint promotions, marketing, news or other programming efforts between WDZL(TV) and the *Sun-Sentinel* nor to have overlapping personnel." *Id.* at 4718 n.1.

<sup>5</sup> See *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd. 11058, 11105 (2000) ("*1998 Biennial Regulatory Review*").

<sup>6</sup> The temporary waiver was subject to the same "hold separate" terms and conditions. *Id.* at 11109-10. In 2000, Tribune petitioned the Commission to lift the "hold separate" requirement, arguing that changes in the media marketplace and the possibility of further public interest benefits as a result of the common ownership justified lifting the ban. Tribune's request was granted in 2002. See *Tribune Company; Petition For Removal of Condition on Grant Of Application for Transfer of Control of Television Station WBZL(TV), Miami, Florida*, 17 FCC Rcd. 15526 (2002).

<sup>7</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398 (3d Cir. 2004), *cert denied*, 125 S. Ct. 2902-03 (2005) ("*Prometheus*").

<sup>8</sup> *Id.*

that the blanket prohibition “is not necessary to protect diversity,” especially in the nation’s largest markets.<sup>9</sup> Based on the standard pronounced by the Commission in its initial biennial review, Tribune is entitled to the requested temporary waiver as the Commission endeavors to fulfill its decade-long commitment to revise the Rule to be consistent with today’s media marketplace.<sup>10</sup>

WSFL is the seventh-ranked television station in the Miami-Ft. Lauderdale DMA with a 3.7 share. The *Sun-Sentinel* has a circulation in the Miami-Ft. Lauderdale DMA that is greatly exceeded by the *Miami Herald*. In fact, the *Sun-Sentinel* has a daily circulation of *less than 2,500* in Dade County, where WSFL is licensed to Miami and has approximately two-thirds of its service area. Miami-Ft. Lauderdale is the 17th largest DMA in the country, and the West Palm Beach-Ft. Pierce DMA, immediately to the north, is the 38th largest DMA. Together, as described below, they form the South Florida market with more than 2.27 million television homes (1.52 million and 752,000, respectively). The DMA is served by numerous independent broadcasters and publishers:

- \* 29 full-service television stations broadcast in the South Florida market (19 in the Miami-Ft. Lauderdale DMA and 10 in the West Palm Beach DMA), with 23 of these television stations separately and independently owned.
- \* Approximately 90% of the television households in the Miami DMA receive service from cable television systems, direct broadcast satellite operators or other providers of multichannel video programming service.
- \* Overall, eight different publishers of daily newspapers serve the South Florida market.

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<sup>9</sup> *Id.* at 398-99.

<sup>10</sup> *See infra* at 9, 12-13.

- \* Numerous weekly newspapers are published and circulated in the Miami-Ft. Lauderdale and West Palm Beach DMAs, by at least nine independent publishers.
- \* In the Miami DMA, there are 78 radio stations owned by 42 separate and distinct owners. Even if the count is limited to the FCC's newly-defined radio market, there are 56 radio stations with 32 separate owners that provide news, information, talk and entertainment programming.
- \* Finally, broadband access to the Internet provides news and information at the touch of a consumer's fingertips. In Miami, Google, Yahoo and MSNBC provide by far the highest-accessed local news and information services through local portals containing unique locally-originated content and by serving as aggregators that provide and structure access to hundreds of local websites and weblogs ("blogs") originating from and focusing on the greater South Florida area.

Further, economic analysis confirms that the broadcast and newspaper markets in South Florida remain highly competitive notwithstanding Tribune's common ownership.<sup>11</sup> An assessment of concentration in the Miami-Ft. Lauderdale market using the Herfindahl-Hirschman Index ("HHI") relating only to traditional media (newspapers, broadcast television and radio) reveals a market that is significantly less concentrated than the national average for all media markets. Indeed, the HHI for the Miami market is 1286, within approximately 100 points of the average for the top 10 television markets and more than 200 points less than the national average. Moreover, that level of concentration has declined since 2000, demonstrating increased competition in the Miami market during Tribune's common ownership. Most importantly, the concentration of the market remains essentially unaffected by the combination of the *Sun-Sentinel* and WSFL, which is only the seventh-ranked television station in the market.

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<sup>11</sup> See generally, Mark R. Fratrik, Ph. D., BIA Financial Network, *Report on Miami-Ft. Lauderdale, FL Media Advertising Markets: Traditional Media Revenue Share and Concentration Analysis in Support of the Request for Waiver of Station WSFL* (May 1, 2007) ("BIA Report") (attached hereto as Attachment 1).

Of course, the concentration in South Florida is much lower than is reflected by this HHI, because this analysis does not account for revenue flowing to media properties in the West Palm Beach DMA, many of which compete directly with traditional media properties in Fort Lauderdale and Miami. Moreover, the concentration is lower still because the numerical analysis does not account for advertising revenue that flows to non-traditional media, including local cable systems and Internet websites.

As Tribune demonstrates, the combination of WSFL and the *Sun-Sentinel* has not measurably or adversely affected diversity or competition. Rather, the combination of WSFL and the *Sun-Sentinel* has benefited consumers by making possible the presentation of more and higher quality news and public affairs programs, as the Commission has recognized. During the period of common ownership, WSFL has initiated a daily half-hour news program that previously was not available in the market. Over the past few years, since the elimination of the “hold separate” requirements imposed as part of the initial waiver, WSFL has enhanced its regularly scheduled public affairs programming, its public service announcements, and its community service projects with *Sun-Sentinel* contributions.

Given the procedural posture of the Rule and the substantial delay in replacing it, Tribune is entitled to a temporary waiver of the Rule pending the final outcome of the Commission’s decision on remand from the Third Circuit in the *FNPRM*.<sup>12</sup> As the Commission

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<sup>12</sup> See 2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, Further Notice of Proposed Rulemaking, 21 FCC Rcd. 8834 (2006) (“*FNPRM*”).

indicated in its first biennial review nine years ago, temporary waivers pending the completion of rulemaking proceedings are warranted where (1) the rulemaking proceedings are of protracted length, (2) a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule, (3) the Commission can conclude that the application before it falls within the scope of the proposals in the proceeding, and (4) a grant of a temporary waiver would be consistent with the goals of competition and diversity.<sup>13</sup> Four years ago, the Commission found that enforcement of the Rule as it was adopted in 1975 no longer serves the public interest, a finding that has been upheld by the United States Court of Appeals for the Third Circuit.<sup>14</sup> The Commission recognized that newspaper-broadcast combinations, especially in the largest markets, do not adversely affect competition but promote the public interest by delivering more and better local coverage of news and public affairs without seriously affecting diversity of viewpoint or programming. The Commission eliminated the Rule and established new “cross-media limits,” under which Tribune would be permitted to own WSFL and the *Sun-Sentinel*. The Commission either will reaffirm the limits adopted in 2003 or establish revised limits. In such circumstances, Tribune is entitled to a temporary waiver pending completion of proceedings on the *FNPRM*, and any application of the Rule to compel either WSFL or the *Sun-Sentinel* to be sold or shut down would disserve the public interest, would be arbitrary and capricious, and would be unconstitutional under the First and Fifth Amendments.

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<sup>13</sup> See *supra* at 13.

<sup>14</sup> See 2002 Biennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd. 13620, 13760 (2003) (“2003 Order”), *aff’d in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004), *cert denied*, 125 S. Ct. 2902-03 (2005).

## **II. Tribune Is Entitled To A Temporary Waiver Of The Rule.**

The history of the Rule, from 1975 to the present, supports Tribune's request for a temporary waiver pending completion of the Commission's remand proceedings to revise the Rule as compelled by the Third Circuit's clear mandate that "the Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."

### **A. Background Of The Rule.**

#### *1. Adoption of the Rule and Application of its Waiver Policy.*

In 1975, the Commission adopted the Rule prohibiting ownership of a daily newspaper and a broadcast station serving the same community, seeking both to enhance diversity and foster competition.<sup>15</sup> In adopting the Rule, the Commission contemplated processing a "number of waiver requests" and set forth a general policy to govern these requests.<sup>16</sup> In doing so, the Commission first enumerated three examples involving financial hardship or distress: (1) an inability to sell a station; (2) a potential sale, but only at an artificially depressed price; or (3) where separate ownership and operation of the newspaper and station could not be supported in the locality.<sup>17</sup> The Commission also established a fourth and independent basis for waiver: if it can be shown "*for whatever reason* that the purposes of the

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<sup>15</sup> See *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1070-74 (1975) ("1975 Order"), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) ("FCC v. NCCB").

<sup>16</sup> See *id.* at 1085. In affirming the reasonableness and constitutionality of the Rule in 1978, the Supreme Court relied upon the Commission's adoption of its waiver policy. See *FCC v. NCCB*, 436 U.S. at 802 n.20.

<sup>17</sup> *1975 Order*, 50 F.C.C.2d at 1085. In discussing these cases of financial hardship or distress, the Commission noted that in "any of these instances we contemplate waivers of reasonable duration, so that we shall not always be bound by a result based on outdated information." *Id.*



rule would be disserved by divestiture, if the rule, in other words, would be better served by continuation of the current ownership pattern, then waiver would be warranted.”<sup>18</sup>

2. *Two Decades Later, One Decade Ago – Proposed Revision of the Rule.*

Two decades after the adoption of the Rule, and in recognition of the significant changes to the media landscape over that period, the Commission more than 10 years ago began calling for a change in the Rule. In 1996, in explaining its grant to Capital Cities of a temporary waiver (in lieu of the requested permanent waiver) of the Rule, the Commission said that it would “proceed expeditiously with an open proceeding to consider revising [its] newspaper broadcast cross-ownership policies.”<sup>19</sup> Chairman Reed E. Hundt separately observed that the Rule “is right now impairing the future prospects of an important source of education and information: the newspaper industry,” and stated his belief that the Commission should be able to complete the rulemaking within one year — before the expiration of the waiver granted to Capital Cities.<sup>20</sup>

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<sup>18</sup> *Id.* (emphasis added). The Commission has subsequently encapsulated its waiver policy as counseling in favor of waivers “if: (1) a combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved.” *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd. 17283, 17284-85 (2001) (“*Newspaper-Broadcast NPRM*”). Despite its recognition that its waiver policy applied to combinations proposed or created after adoption of the Rule, during the next 30 years, the Commission granted only two permanent waivers involving newspaper and television station combinations, each of which involved significant elements of financial distress. *See Field Communications Corp.*, 65 F.C.C.2d 959 (1977) (“*Field*”); *Fox Television Stations Inc.*, 8 FCC Rcd. 5341 (1993), *aff’d sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995) (“*Fox Stations*”).

<sup>19</sup> *Capital Cities/ABC, Inc.*, 11 FCC Rcd. 5841, 5851 (1996) (“*Capital Cities*”).

<sup>20</sup> *Id.* at 5906 (Separate Statement of Chairman Reed E. Hundt). The Commission did not complete the promised proceeding within the year, and Capital Cities was then granted a temporary waiver pending the outcome of the promised rulemaking proceeding.

The very next year (in 1997), Tribune proposed to acquire six stations owned by Renaissance Communications Corp. The Commission eventually granted Tribune a temporary waiver of the Rule pending the outcome of the promised rulemaking to permit the cross-ownership of WSFL, then WDZL, and the *Sun-Sentinel*.<sup>21</sup> In their decisions, both the Commission and the United States Court of Appeals for the District of Columbia Circuit recognized the need for modification of the Rule, but held that the promised rulemaking was the appropriate venue.<sup>22</sup>

As required by the Telecommunications Act of 1996,<sup>23</sup> the Commission in 1998 undertook its first Biennial Review, which it completed in the form of the *1998 Biennial Regulatory Review*.<sup>24</sup> There, consistent with the statements of all of the Commissioners in *Capital Cities* and *Renaissance*, the Commission again concluded that the Rule needed to be modified, and promised to initiate a rulemaking proceeding to amend the Rule.<sup>25</sup> The Commission failed to initiate such a rulemaking, but did launch its 2000 Biennial Review, the

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<sup>21</sup> See *supra* at 2-3. *Renaissance Communications Corp.*, 13 FCC Rcd. 4717 (MMB 1998). The Commission initially granted Tribune a finite period to come into compliance with the Rule, but after review of the D.C. Circuit's opinion, extended the waiver until the completion of the rulemaking.

<sup>22</sup> *Renaissance Communications Corp.*, 12 FCC Rcd. 11866 (1997), *aff'd sub nom.*, *Tribune Co. v. FCC*, 133 F.3d 61 (D.C. Cir. 1998) ("*Renaissance*"). The Newspaper Association of America ("NAA"), of which Tribune is a member, formally filed a Petition for Rulemaking on April 28, 1997.

<sup>23</sup> See Telecommunications Act of 1996, P.L. 104-104, § 202(h); see also 47 U.S.C. § 161. Section 202(h) requires the Commission to determine whether a rule is "necessary in the public interest as the result of competition" and to "repeal or modify any regulation it determines to be no longer in the public interest."

<sup>24</sup> *1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058 (2000).

<sup>25</sup> *Id.* at 11109 ("we recognize that there may be situations in which the rule may not be necessary to protect the public interest in diversity and competition"). As part of the biennial review, the Commission specifically recognized that it had granted Tribune a temporary waiver for WSFL pending completion of the proposed rulemaking, and extended that temporary waiver pending the resolution of the rulemaking it was proposing to initiate. *Id.* at 11110-11111.

report for which was issued in 2001.<sup>26</sup> The Commission once more committed to issuing a notice of proposed rulemaking.<sup>27</sup> It was against this background of repeated assurances and promises of expeditiously launching a rulemaking to bring the Rule in line with current competitive and technological realities that Tribune merged with Times Mirror.

3. *Five Years Later, Five Years Ago – An NPRM.*

More than five years ago, in September 2001, the Commission issued its Notice of Proposed Rulemaking regarding the modification or elimination of the Rule.<sup>28</sup> Approximately one year after taking a full set of public comments on the proposed modification of the Rule, the Commission in 2002 consolidated the *Newspaper-Broadcast NPRM* into an omnibus multiple ownership proceeding tied to the 2002 Biennial Review and its review of several cases remanded to it from the D.C. Circuit, and relaunched the inquiry (the “Omnibus Proceeding”).<sup>29</sup> The Commission took a further round of public comment, commissioned market studies, and held field hearings regarding the revision of the Rule and other issues of common media ownership. After a year of comprehensive study, the Commission completed its Omnibus Proceeding and in June 2003 released the *2003 Order* that revised many of the FCC’s ownership rules (including the Rule).<sup>30</sup>

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<sup>26</sup> *2000 Biennial Regulatory Review*, 16 FCC Rcd. 1207 (2001).

<sup>27</sup> *Id.* at 1218.

<sup>28</sup> *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17283.

<sup>29</sup> *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, Notice of Proposed Rulemaking, 17 FCC Rcd. 18503 (2002).

<sup>30</sup> *2003 Order*, 18 FCC Rcd. at 13760.

4. *Four Years Ago – The Order Repealing And Relaxing The Rule.*

In the *2003 Order*, the Commission once more found that the Rule was no longer justifiable under the standard set forth in Section 202(h) of the Telecommunications Act of 1996, as amended.<sup>31</sup> The Commission concluded that “television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation.”<sup>32</sup> The Commission further concluded that the public interest in localism and local programming supported the repeal of the Rule because the “evidence suggests that the rule actually works to inhibit such programming.”<sup>33</sup> Regarding viewpoint diversity, the Commission concluded that “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties.”<sup>34</sup> The Commission also found that “relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”<sup>35</sup>

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<sup>31</sup> See *supra* at 7 n.14.

<sup>32</sup> See *2003 Order*, 18 FCC Rcd. at 13802. The Commission concluded that “in light of the overwhelming evidence that combinations can promote the public interest by producing more and better overall local news coverage... the current rule is not necessary to promote our localism goal, and that it, in fact, is likely to hinder its attainment.” *Id.* at 13759.

<sup>33</sup> *Id.* at 13753.

<sup>34</sup> *Id.* at 13761. The FCC’s conclusions were supported by independent studies requested by the Commission. See David Pritchard, *Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (FCC Media Ownership Working Group Report #2), September 2000; Thomas C. Spavins, et al, *The Measurement of Local Television News and Public Affairs Programs* (FCC Media Ownership Working Group Report #7); September 2002; Scott Roberts, et al, *A Comparison of Media Outlets and Owners for Ten Selected Markets* (1960, 1980, 2000) (FCC Media Ownership Working Group Report #1), September 2002.

<sup>35</sup> *2003 Order*, 18 FCC Rcd. at 13760-61.

Accordingly, the Commission replaced Section 73.3555 with a new set of cross-media limits, under which Tribune was entitled to retain its common ownership of WSFL and the *Sun-Sentinel*.

5. *Three Years Ago – Remand of The Order Relaxing The Rule*

The United States Court of Appeals for the Third Circuit remanded the 2003 *Order* after it was challenged on appeal by a number of parties. The Court, however, affirmed the Commission's decision to repeal the Rule and its blanket ban on newspaper-broadcast cross-ownership.<sup>36</sup> As the Third Circuit emphatically stated, "[t]he Commission's decision not to retain a ban on newspaper/broadcast cross-ownership is justified under § 202(h) and is supported by record evidence."<sup>37</sup> Concluding that "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest," the Court blessed the Commission's decision to modify the newspaper/broadcast cross-ownership prohibition.<sup>38</sup> In doing so, the Court supported the Commission's goal of increased localism by recognizing that "[n]ewspaper/broadcast combinations can promote localism" and that the existing ban actually "undermined" this important goal.<sup>39</sup> In addition, the Court agreed with the Commission that "[a] blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity."<sup>40</sup> The Court found that "the Commission reasonably concluded that it did not have enough confidence in the proposition that commonly

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<sup>36</sup> *Prometheus*, 373 F.3d at 398.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 398-99.

<sup>40</sup> *Id.* at 399.

owned outlets have a uniform bias to warrant sustaining the cross-ownership ban.”<sup>41</sup> The Court thus upheld the Commission’s finding that retaining the ban was no longer in the public interest, and rejected challenges to the Commission’s conclusions that cross-ownership can increase the quantity and quality of local news programming and that commonly-owned media outlets frequently present diverse viewpoints.<sup>42</sup>

The Third Circuit remanded the FCC’s *2003 Order* in June 2004; the Commission did not take any further official action until two years later. On June 21, 2006, the Commission adopted the *FNPRM*, and asked whether it should revise the 2003 cross-media limits, or whether it could justify those limits based upon additional evidence or analysis.<sup>43</sup> The Commission now has received comments and reply comments on the *FNPRM*, and has conducted four further formal field hearings on media ownership. It is within the context of its 11-year-old commitment to revise the Rule, its six-year-old initiation of the proceedings to revise the Rule, its nearly four-year-old action repealing the Rule and adopting a rule that would permit Tribune’s continued common ownership of WSFL and the *Sun-Sentinel*, and its pending *FNPRM* that the Commission must evaluate Tribune’s request for a waiver of the Rule.

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<sup>41</sup> *Id.* at 399-400.

<sup>42</sup> Although the Court rejected certain elements of the rationale underlying the new cross-media limits, including some components of a “diversity index,” the Court did not question the Commission’s finding that the public interest benefits that can be realized in larger markets significantly outweigh the impact of a decrease in the count of independently owned outlets or voices.

<sup>43</sup> The full text of the *FNPRM* was released on July 24, 2006. Comments were filed on October 23, 2006 and reply comments were filed on January 16, 2007.

**B. The Standard for Granting a Temporary Waiver Pending Action on the FNPRM.**

Tribune is entitled to a temporary waiver of the Rule pending action on the FNPRM under the Commission's standard for a such waiver. Nine years ago, when the Commission in its first biennial review called for the initiation of a proceeding to examine the Rule, it acknowledged that it retained "both the right and obligation" to review any request for conditional waiver of the Rule pending the rulemaking "based upon the specific facts in a particular case."<sup>44</sup> The Commission stated emphatically that "[w]hat is important is whether the public interest would be served by a grant of a waiver."<sup>45</sup> The Commission recognized that it had granted temporary waivers pending proceedings examining some of the ownership rules at issue, including the television duopoly geographic market standards,<sup>46</sup> but indicated that such waivers were not appropriate where the Commission was just initiating its review, as it was for the first time at that time in 1998.<sup>47</sup>

Despite the fact that it was initiating its very first biennial review, the Commission did set forth standards suggesting when the grant of a conditional waiver of the Rule pending the rulemaking would be appropriate. As the Commission envisioned, "[t]his is

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<sup>44</sup> See *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd. 11276, 11294 (1998) ("*Notice of Inquiry*").

<sup>45</sup> *Id.* at 11294-95.

<sup>46</sup> *Id.* at 11294, citing *Second Further Notice*, 11 FCC Rcd. 21655, 21681 ("Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim").

<sup>47</sup> *Id.* at 11294 ("In contrast to those situations, in our first biennial review of broadcast ownership rules, we do not believe it appropriate to provide for conditional waiver of any of the ownership rules under review in this proceeding solely because of the pendency of this review. *Here, for example, we do not have a protracted proceeding or substantial record on any of these rules that leads us to initial conclusions about any specific proposals to modify or eliminate any of the rules at issue here.*") (emphasis added).

most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule.”<sup>48</sup> The Commission indicated that its precedent supported granting temporary waivers pending proceedings where the “Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the goals of competition and diversity.”<sup>49</sup>

Given these pronouncements nine years ago, this Commission must recognize that in the instant application Tribune proposes a temporary waiver that is grounded on the precise basis foretold by the Commission in 1998. In assessing this waiver request, the Commission cannot ignore the conclusions reached in the *2003 Order*, especially given that the Third Circuit upheld that portion of the Commission’s findings. More than three years ago, on the basis of exhaustive inquiry, review of thousands of public comments, and numerous empirical studies, the Commission fulfilled its commitment and replaced the Rule with less prohibitive limits that reflected the significant competitive and technological changes in the media marketplace. The Commission recognized that newspaper-broadcast combinations (1) do not adversely affect competition in the market, (2) promote the public interest by delivering more and better local coverage of news and public affairs, and (3) do not pose a widespread threat to diversity of viewpoint or programming.<sup>50</sup> Given these conclusions, and their confirmation by the facts described below, Tribune is entitled to a grant of the requested waiver. Having found the Rule outdated and counterproductive to the public interest, the Commission must recognize the

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *See supra* at 9-11; *2003 Order*, 18 FCC Rcd. at 13748-49, 13752-54, 13756-57, 13759-60, 13767.



protracted length of this proceeding, acknowledge the conclusions that were adopted and upheld by the Third Circuit, and realize that Tribune complies with the rules that were adopted and are being examined on remand. Under the standard enunciated for temporary waivers pending the rulemaking, and having already granted Tribune a temporary waiver of the type requested here without any adverse effects, it would be contrary to the public interest to force Tribune to divest its WSFL merely because Tribune seeks to transform itself from a publicly traded corporation to one owned by the ESOP Plan.<sup>51</sup>

If the Commission needed any other basis for concluding that the requested temporary waiver was warranted to preserve the *status quo* while it completes its remand proceeding on the *FNPRM*, it need look no further than the waiver standard adopted with the Rule. As the Commission indicated more than thirty years ago, waivers are warranted even in situations that do not involve economically distressed media properties where, “for whatever reason,” the “purposes of the rule would be disserved by divestiture” because the Rule “would be better served by continuation of the current ownership pattern.”<sup>52</sup> This criterion independently establishes a basis for waivers in situations where neither the broadcast station nor the newspaper is in financial distress. As Tribune will show, retention of Tribune’s common ownership of

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<sup>51</sup> This request, therefore, is far from the situation where an applicant seeks a waiver pending completion of a biennial or quadrennial rulemaking. The Commission already has found that the Rule must be replaced, and has been upheld by a court of appeals in that finding. The Commission adopted a replacement rule that, although requiring review on remand, clearly permits the present cross-ownership. Tribune thus is entitled to a “hard look” at its request for an interim waiver pending completion of the rulemaking. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). Additionally, the Commission cannot blindly apply a rule that would force Tribune to divest its interests in media where the Commission has affirmatively recognized that the facts underlying the rule and its application have changed and warrant a different result. At a minimum, the Commission must justify its departure from its previous conclusions. See *Radio-Television News Directors Association v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) (“*RTNDA*”).

<sup>52</sup> See *supra* at 6; 1975 Order, 50 F.C.C.2d at 1085.

WSFL and the *Sun-Sentinel* pending the Commission's review of the *FNPRM* on remand better serves the public interest than forced divestiture under the Rule.

**C. There is No Harm to Diversity from Tribune's Common Ownership of WSFL and the *Sun-Sentinel*.**

Given the competitive nature of the South Florida market and the abundance of media outlets available to consumers, a waiver of the Rule to permit common ownership of WSFL, the seventh-ranked station in the market, and the *Sun-Sentinel* will not adversely affect competition or diversity. Miami-Ft. Lauderdale is the 17th largest DMA (the "Miami DMA"), and West Palm Beach-Ft. Pierce (the "WPB DMA"), immediately to the north, is the 38th largest DMA. Together, they form the South Florida market with more than 2.27 million television homes (1.52 million and 752,000, respectively).<sup>53</sup> The Miami DMA is extremely diverse and competitive, with at least 11 independently-owned television stations, 42 independently-owned commercial and non-commercial radio stations, and five daily newspapers published by four different owners. The WPB DMA contains an additional 10 independently-owned television stations and at least two daily newspapers that provide service to portions of the Miami DMA, most notably Ft. Lauderdale, the community where the *Sun-Sentinel* is published. The cross-media limits adopted in 2003 clearly permit WSFL to be owned with the *Sun-Sentinel*. Even if the cross-media limits are ignored, the Commission should find that the requested temporary waiver of the Rule is in the public interest. Tribune's seventh-ranked television station has

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<sup>53</sup> While the Miami DMA and the WPB DMA technically are separate DMAs, the public in a significant portion of both DMAs has the choice between traditional media sources from either market. Tribune has previously submitted an Economic Analysis form Roger D. Blair, supporting the view that these markets are inter-related. During the course of the analysis of the South Florida market, Tribune therefore will cover media in both DMAs. The Blair study is discussed in the Fratrik Report, and has been submitted as an attachment to that report.

combined with a newspaper that has a daily circulation of less than 2,500 in the county that comprises two-thirds of that television station's service area. Given the diversity in the relevant market, where economic analysis confirms the presence of vibrant competition, a temporary waiver is warranted.

1. *Television Stations in the Relevant Markets.*

Today, there are 19 broadcast television stations in the Miami DMA, and 10 stations in the West Palm Beach DMA, for a total of 29 stations in the South Florida market (an increase from the total of 25 stations in 2001 and the 10 stations in 1975).<sup>54</sup> These stations are owned by 23 distinct owners, with 11 separate entities in the Miami DMA alone. Two of the four major networks (CBS and NBC) own duopolies in the Miami DMA, as does Univision. Like other markets, broadcast television ratings in the South Florida market are generally in decline; this is not surprising considering the emergence of so many new and different media sources since 1975.

**Miami DMA TV Stations With A 1 Share or Greater**<sup>55</sup>

Station	Owner	Affiliation	1975	2001	2006
WLTV, Channel 23	Univision	Univision	2	11	8.6
WSVN, Channel 7	Sunbeam Television Corp.	FOX	31	8	7.4
WPLG, Channel 10	Post-Newsweek	ABC	21	10	7.2
WFOR, Channel 4	CBS	CBS	35	9	7
WSCV, Channel 51	NBC Universal	Telemundo	<1	7	6.7
WTVJ, Channel 6	NBC Universal	NBC	9	9	5.8
WSFL, Channel 39	Tribune	CW	NA	5	3.7
WBFS, Channel 33	CBS	MyNetworkTV	NA	6	3.2
WAMI, Channel 69	Univision	Telefutura	NA	2	2.5

<sup>54</sup> In 1975, the Miami DMA had eight television stations and the West Palm Beach DMA had two stations, while in 2001 the Miami DMA had 15 stations and the WPB DMA had 10 stations. *See* Tribune 2001 Comments at 26.

<sup>55</sup> Audience shares are all-day ratings from the Nielsen Station Index for May of the year listed.

Station	Owner	Affiliation	1975	2001	2006
WPXM, Channel 35	Ion	ION	NA	1	1.5
WLRN, Channel 17	Dade County Public Schools	PBS	<1	1	1.3
WPBT, Channel 2	Community TV Foundation	PBS	2	2	1.2
WHFT, Channel 45	Trinity Broadcasting	TBN	<1	1	<1

WSFL is only the seventh-ranked station in the market, with a 3.7 share, despite the fact that it has been commonly-owned with the *Sun-Sentinel* for almost a decade. WSFL's share has decreased from 5 to 3.7 over the past five years. Of the ten stations that provide local news in the Miami DMA, WSFL is the ninth-ranked station, with a 1.7 rating. The combination of WSFL and the *Sun-Sentinel*, under Tribune's ownership, makes it more competitive and capable of providing news and public affairs programming in this highly competitive and diverse market.

The South Florida television market has grown increasingly diverse and competitive since 1975, a trend that has continued since Tribune's 1997 acquisition of WSFL. A review of the declining audience shares of broadcast television stations demonstrates that diversity and competition are robust, and have increased steadily over time:

- \* In 1975, the top 3 stations (WFOR, WSVN and WPLG) together had an audience share of 87; by 2001, the share of the top 3 (WLTU, WPLG and WFOR) had declined to almost one-third, or 30; in 2006, the top 3 (WLTU, WSVN and WPLG) had declined even further to 23.2. Of course, the share of each of these three stations is double that of WSFL.
- \* In 1975, the largest share earned by a television station was 35 (WFOR); by 2001, the largest share had decreased to less than one-third, or 11 (WLTU); in 2006, the largest share for a station was even lower at 8.6 (WLTU).
- \* Since 2001 English-language stations' shares have dropped, and while four stations earned greater than a 9 share in 2001, no station now earns greater than an 8.6 share.

- \* While ratings for English-language stations have decreased almost across the board, currently at least a dozen stations earn a 1 share or greater; this is twice the number of stations with a 1 share in 1975.

There is no reason to expect any change in these declining trends in the ratings of the highest rated English-language stations in the Miami DMA.

While audience share for the once-dominant stations has declined steadily since 1975, the amount of local news programming produced each week by television stations in the Miami DMA has increased. In addition, competition for news viewers remains robust, with many choices available.

**Hours and Ratings of Local News**<sup>56</sup>

Station	Affiliation	Hours/Wk 2001	Hours/Wk 2006	1975 Sh	2001 Sh	2006 Sh
WLTU, Channel 23	Univision	12	12	NA	5.9	6.3
WPLG, Channel 10	ABC	24	28	11	6.3	5.7
WSCV, Channel 51	Telemundo	14.5	14.5	NA	4.8	5.5
WSVN, Channel 7	FOX	42	53.5	16	6	5.4
WFOR, Channel 4	CBS	24.5	26.5	11	7.1	4.8
WTVJ, Channel 6	NBC	30	30	3	7.3	4.2
WJAN, Channel 41	Indep.	NA	NA	NA	NA	2.6
WBFS, Channel 33	MyNetTV	3.5	4.0	NA	2.9	2.0
WSFL, Channel 39	CW	3.5	3.5	NA	2.2	1.7
WAMI, Channel 69	Telefutura	NA	NA	NA	NA	1.1
WPXM, Channel 35	ION	2.5	NA	NA	0.5	NA
Total Hours		156.5	172			

Together, Miami DMA broadcast television stations produce at least 172 hours of local news programming each week, an increase over the 156.5 hours per week broadcast five years ago. Moreover, the steady spread of ratings through the various newscasts also demonstrates the growing diversity of sources in the market:

<sup>56</sup> Audience shares are evening news ratings from the Nielsen Station Index for May of the year listed.

- \* Today, the highest rated newscast earns only a 6.3 share, a figure matched or exceeded by three stations in 2001; in 1975, three stations' newscasts matched or exceeded 11.
- \* Today, ten stations' newscasts exceed a 1 share or greater; in 2001 only eight stations did so, and in 1975 there were only four stations that had newscasts.

The facts and trends evident from the table show that while audience ratings for broadcast television have declined, the delivery of news in the Miami DMA is more plentiful and competition is more intense than ever.

Furthermore, there are 10 full service television stations in the West Palm Beach DMA. Of these, three stations reach 75% of the Miami-Ft. Lauderdale population with their Grade B contour.<sup>57</sup>

## 2. *Impact of MVPD Presence in the DMA.*

Together, cable, DBS and other MVPDs have achieved a 90% penetration rate in the Miami DMA, up from 84% in 2001. Currently, more than 67% of television households in the Miami DMA subscribe to cable, and almost 24% subscribe to DBS or another MVPD service; in 2001, approximately 75% of television households subscribed to cable, but only 9% subscribed to DBS.<sup>58</sup> In 2001, cable providers delivered approximately 75 channels to subscribers; today, cable and other MVPDs deliver between 250 and 400 channels.<sup>59</sup>

As discussed previously, cable networks increasingly take audience share of viewers from broadcast affiliates. For example:

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<sup>57</sup> While not included in the traditional "voice" count, there are also numerous lower power television stations licensed to both the Miami DMA and the WPB DMA. Those low power stations are listed in Appendices 1 and 2, respectively.

<sup>58</sup> See Nielsen Market Data, for July 2006, TVB Research Central, Market Track data, New York DMA, found at [www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=38](http://www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=38).

<sup>59</sup> BROADCASTING & CABLE YEARBOOK 2001; [www.comcast.com](http://www.comcast.com).

- \* In 2006, six cable networks (TNT, Disney Channel, Nickelodeon, ESPN, FOX News Channel, and the Cartoon Network) ranked among the top 15 channels viewed and another four (USA, BET, TBS and Lifetime) made the top 20.<sup>60</sup>
- \* In 2006, ten cable networks ranked among the top 20 rated video channels in the Miami DMA, exceeding nine of the broadcast stations in the Miami DMA.
- \* In 2006, 17 cable channels earned a 1 audience share or greater, and exceeded 7 of the broadcast stations in the Miami DMA.<sup>61</sup>
- \* As with television station ratings, cable channels also have lost audience share, as in 2001, 13 broadcast stations and 28 cable networks each earned a share of one or greater, and in 2006, 12 broadcast stations and 17 cable networks each earned a share of one or greater.<sup>62</sup>
- \* In addition to the 17 cable channels with a 1 share or greater, however, more than 50 other satellite programming channels received greater than a 0.1 rating in the Miami DMA, including new or strengthened cable networks like the Family Channel, the History Channel, Spike TV, HGTV, Fox South Florida, MSNBC, Bravo, the Learning Channel, and Oxygen.<sup>63</sup>

### 3. *Newspapers Published in the Market.*

Miami had three independently published daily newspapers in 1975, but only the *Miami Herald* and Tribune's *Sun-Sentinel* still are published.

<b>Top Daily Newspapers</b>	<b>1975 Circulation</b>	<b>2001 Circulation</b>	<b>2006 Circulation</b>
<i>Miami Herald</i>	375,745	300,377	312,109
<i>South Florida Sun-Sentinel</i>	96,616	236,095	260,316
<i>Miami News</i>	77,568	Not published	Not published

Today, Cooke Communications publishes the *Key West Citizen* (published for 125 years, Key West, Key Largo and Marathon), and Forum Communications (Suburban Press) publishes the

<sup>60</sup> The source for ratings is Nielsen LPM Household, for May of the year indicated.

<sup>61</sup> In addition to the channels discussed above, these cable channels included CNN, MTV, and FX.

<sup>62</sup> As discussed above, there are many more video program channels available today than were available five years ago. Satellite program channels more than doubled between 2002 and 2006.

<sup>63</sup> In 1975, cable channels were in their infancy, and did not receive such audience shares.

*Tamarac/North Lauderdale Forum*, and both serve portions of the Miami DMA. In the WPB DMA, Cox Communications publishes *The Palm Beach Daily News* and the *Daily News*, which along with *The Palm Beach Post*, all achieve substantial circulation in the Miami DMA. The *Sun-Sentinel* and the *Miami Herald*, along with the two WPB DMA daily newspapers, serve the entire South Florida market.

Importantly, the *Sun-Sentinel* and WSFL serve different, while overlapping, geographic areas. Of the *Sun-Sentinel*'s total daily circulation of 241,708, only 2,416 were located in Miami's Dade County, where WSFL is licensed. Similarly, of the *Sun-Sentinel*'s Sunday circulation of 325,456, only 3,596 were in Miami's Dade County. In contrast, in Palm Beach county, an area *outside* the Miami DMA of WSFL, the *Sun-Sentinel* has a daily circulation of 74,394 and a Sunday circulation of 90,091.

In addition to the daily newspapers, South Florida is home to a robust market of weekly newspaper competitors. There are 22 weekly newspapers published by 16 owners in the Miami DMA. These weekly papers serve a diverse array of communities and special interests throughout the South Florida market. Among these weekly publications are:

- \* Independent weeklies, including the *Sunrise Forum* (Media General); *South Dade News Leader* (Calkins Media Group); *Coral Gables News* and *Palmetto Bay Tribune* (Miller Publishing); and *Miami Today* (Michael Lewis).
- \* Weeklies published by McClatchy Newspapers in addition to the *Miami Herald*, and by Tribune affiliates in addition to the *Sun-Sentinel*.
- \* Weeklies published by the two other daily newspaper publishers including the *Marathon Free Press* (Cooke Communications) and *West Boca Times* (Forum Communications).



4. *AM, FM and Satellite Radio Service in the DMA.*

The Miami DMA contains 78 commercial and non-commercial AM and FM radio stations, owned and operated by 42 separate entities.<sup>64</sup> These stations offer a variety of formats. Of the 78 stations in the DMA, 20 English-language radio stations, operated by 17 different broadcasters, offer varied formats that focus on news, talk, sports, information, education and religion. Eighteen stations, operated by 10 different broadcasters, offer Hispanic or ethnic formats. Forty-five stations, operated by 14 different broadcasters, offer a variety of music formats, and one station offers a children's format.<sup>65</sup>

In addition, in the WPB DMA, there are 53 additional radio stations, 31 of which are located in the FCC-defined radio market.<sup>66</sup> Many of these radio stations serve large portions of the Miami-Ft. Lauderdale DMA. In particular, two FM radio stations in the West Palm Beach market reach nearly 60% of the population in the Miami-Ft. Lauderdale market.

Finally, in addition to terrestrial radio, as discussed previously, both XM and Sirius offer satellite radio programming on a subscription basis to Miami residents, each with over 130 channels of format and variety.<sup>67</sup>

5. *Traditional Media Revenue Share and Concentration Analysis*

Analysis of the revenues and concentration for broadcasters and newspaper publishers confirms the "voice count" analysis demonstrating that common ownership of WSFL

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<sup>64</sup> See BIA Report at 8. In the more limited radio geographic market as defined by the rules adopted in the 2003 Order, there are 55 radio stations owned by 31 different owners. *Id.*

<sup>65</sup> Appendix 3 contains a list of the radio stations in the Miami DMA.

<sup>66</sup> Appendix 4 contains a list of the radio stations in the WPB DMA.

<sup>67</sup> Appendix 5 contains a list of program offerings from XM and Sirius.

and the *Sun-Sentinel* has not adversely affected, and will not affect, competition in the South Florida market. The HHI for the broadcast and newspaper media in Miami in 2005 is 1286, more than 200 points lower than the national average of 1495, and only about 100 points higher than the average of the top ten television markets (1,175). This HHI is indicative of a market that is at the low end of “moderately concentrated” range as defined by Section 1.5 of the Department of Justice’s Merger Guidelines and much closer to the 1,000 level that represents an unconcentrated market than the 1,800 level that represents a “highly concentrated” market.

Most importantly, Tribune’s common ownership of WSFL and the *Sun-Sentinel* has not resulted in any significant increase in the media concentration in the Miami market, as demonstrated by a number of factors. First, the level of concentration in the Miami market has decreased since Tribune’s acquisition of WSFL, and the HHI has decreased from approximately 1351 in 2000 to 1286 in 2005.<sup>68</sup> Second, while Tribune has the top advertising revenue share in the market at approximately 25%, only 10% of that figure (or 2.5% of the market) is attributable to its ownership of WSFL. Divestiture of WSFL by Tribune therefore would not change the characterization of the Miami DMA based on HHI, because even if WSFL were sold, the HHI would remain well above 1100, and possibly in the 1200 range.<sup>69</sup> In any event, Tribune’s 25% is less than the national average of just over 30% for the market leader, and in this market, there are also significant revenue shares spread across a number of other owners, including McClatchy Newspapers at 18.2% and three others (including CBS and NBC) each with greater than 7%

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<sup>68</sup> See BIA Report at 15.

<sup>69</sup> In the unlikely event WSFL was sold to an entity with no traditional media interest in the market, the HHI could fall as low as 1130. If WSFL was sold to an entity with other media interests, the HHI could remain well above 1,200. In either event, the HHI would still be in the low end of the “moderately concentrated” range under the Guidelines, as it is now.

shares of the revenue in the market. This wide distribution of revenues is indicative of a strongly competitive market.

Moreover, this analysis and its trends do not reflect the revenue shares attributable to media located in the WPB DMA that serve a significant portion of the Ft. Lauderdale and Miami population, and therefore account for a certain portion of the advertising revenue share in that market. Also excluded from this analysis are the effects of cable advertising and non-traditional media such as the Internet, which when considered, further dilute the level of concentration in the South Florida market.

6. *The Internet and Its Impact on the Local Market.*

In recent years, high-speed Internet access in the United States has skyrocketed, fundamentally changing the way Americans receive news and information. In 2002, the Commission readily acknowledged the “important role [of the Internet] in the available media mix” as “a commonly-used source for news, commentary, community affairs, and national/international information.”<sup>70</sup> The prevalence of the Internet as a primary source of news and public affairs information is unmistakable. As of August 2005, consumers in North America spent more hours each week using the Internet (5.9 hours) than reading newspapers (3.4 hours).<sup>71</sup> And although home broadband subscribers spend more time watching local and national television and listening to the radio, they still rely on online news sources more than their local newspaper.<sup>72</sup>

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<sup>70</sup> 2003 Order, 18 FCC Rcd. at 13765-66.

<sup>71</sup> Forrester Research, August 2005; ClickZ, August 2005.

<sup>72</sup> John B. Horrigan, Associate Director for Research, Pew Internet & American Life Project, Online News, at ii (Mar. 22, 2006) (“Online News”).

These trends are expected to continue as more consumers purchase high-speed Internet access. According to the Pew Internet & American Life Project, home broadband adoption increased by 40 percent from 60 million Americans in March 2005 to 84 million Americans in March 2006.<sup>73</sup> Indeed, approximately one-quarter of the growth of daily online news consumption since 2002 can be attributed to the rise in residential broadband adoption.<sup>74</sup> Today's Internet users have a multitude of online news sources from which to receive a diversity of information and commentary, not only including local daily newspaper, television station, and radio news sites, but also national television news sites from CNN and MSNBC with local pages, portals and aggregators such as Google and Yahoo!, international news sites such as BBC, local news blogs, alternative news sites such as Alternet or Newsmax, and news listservs.<sup>75</sup> Users' ability to control the amount and type of content they receive, as well as the method through which they receive it (for example, PDA or mobile phone alert, podcast, or streaming video file), will continue to fuel the popularity of online news sources over traditional print and broadcast media.

Internet usage in the Miami market reflects national trends showing increasing adoption and use. Today, more than 700,000 people in the Miami DMA currently have access to the Internet, and more than 64% of those users have a residential broadband connection.<sup>76</sup> Websites owned by Yahoo!, Google, and Microsoft currently lead audience measurement metrics across the board, including average reach and number of unique visitors per month.

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<sup>73</sup> John B. Horrigan, Associate Director for Research, Pew Internet & American Life Project, Home Broadband Adoption 2006, at i (May 28, 2006) ("Home Broadband Adoption 2006").

<sup>74</sup> Online News at 4.

<sup>75</sup> *Id.* at 10-12.

<sup>76</sup> Media Metrix, March 2006.

These measurements significantly exceed those of websites from traditional broadcasters, and provide not only national news and information, but aggregated access to local news, sports, and weather as well. Comparing the Miami Internet leaders in 2001 and today demonstrates the variety of sources available for news, information, opinion and entertainment.

In 2001, South Florida's online access was dominated by websites owned by America Online, Microsoft and Yahoo, each with a website specifically designed for the Miami-Ft. Lauderdale area.<sup>77</sup> In 2001, AOL reached 74.4% of Internet users, Microsoft reached 75.6% of users, and Yahoo reached 60.9%.<sup>78</sup> The *Sun-Sentinel's* website ranked 12th, with a reach of 11.6%. As in other markets throughout the country, broadband has become more prevalent, and more websites and portals have obtained significant local usage in the market.

While many websites produced by traditional media outlets have grown in popularity since 2001, including websites operated by Tribune, Internet usage in 2006 reflects more vibrant competition in the Miami DMA than ever before. For example:

- \* AOL News, Yahoo! News and MSNBC are still among the seven most accessed websites in the market, but at least 40 websites reach 1% or more of the market.<sup>79</sup>
- \* AOL News reaches 16.4% of Internet users, MSNBC.com reaches 12% of all Internet users, and Yahoo! News reaches 11.9% of all Internet users. On a monthly basis, these three sites each reach between 238,000 and 326,000 unique visitors.
- \* Today, *New York Times Digital* has the greatest reach in the market, with 21.5% of all Internet users. More than 425,000 unique visitors access *New York Times Digital's* website, more than any other website in the market.

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<sup>77</sup> Jupiter Media Metrix, Local Market Audience Ratings (October 2001).

<sup>78</sup> See *id.*

<sup>79</sup> Reach data based upon Media Metrix data for March 2006.

- \* Tribune's reach in the market, as of March 2006, was just over 13%, with just over 260,000 unique visitors per month.
- \* Ten website operators reach more than 100,000 users per month in Miami, and approximately 20 websites reach 50,000 or more unique visitors, including websites operated by traditional media like the in-market publishers of the *Miami Herald*; the four major broadcast networks; and out-of-market publications like the *The Washington Post*. Numerous independent and non-traditional websites are included among the more than 30 websites, including sites operated by Internet Broadcasting Systems, Slate.com, Cox Newspapers, Village Voice Media, Wunderground.com, WSJ.com, and Time.com, which reach more than 25,000 unique visitors.
- \* A number of independent Blogs dedicated to the Miami area can be identified, including Metroblogging Miami (<http://miami.metblogs.com>), Critical Miami ([www.criticalmiami.com](http://www.criticalmiami.com)), Miami Beach 411 ([www.miamibeach411.com](http://www.miamibeach411.com)), Hello Miami ([www.heloomiami.com/blog](http://www.heloomiami.com/blog)), Babalu Blog ([www.babalublog.com](http://www.babalublog.com)), Miami Art Exchange (<http://miamiartexchange.typepad.com>), Miami Nights ([www.miaminights.com](http://www.miaminights.com)), Miami New Times (<http://news.miaminewtimes.com/blogs>), Greener Miami ([www.greenermiami.com](http://www.greenermiami.com)), FLAblog ([www.flablog.net](http://www.flablog.net)), to name just a few.

As the large and diverse number of websites that provide local news and information for South Floridians reflects, there is no shortage of media outlets available to consumers in the Miami DMA.

**D. Numerous Public Interest Benefits Result from Tribune's Ownership of WSFL and the *Sun-Sentinel*.**

Subsequent to its acquisition of WSFL, Tribune introduced a new newscast to the market by arranging for a new prime-time newscast that was not previously broadcast on WSFL. As discussed above, for a majority of the time Tribune has commonly owned WSFL and the *Sun-Sentinel*, Tribune was subject to a "hold separate" requirement, limiting its opportunity to use the resources of the *Sun-Sentinel* to provide new, additional and improved news and public interest programming in the Miami DMA. Although WSFL's newscast is produced by NBC-owned WTVJ, WSFL has ensured that the newscast has reflected the product of Tribune's

newsgathering in South Florida since the FCC's elimination of the "hold separate" requirement.

In addition to acquiring national and international news coverage from CNN, and original content from Tribune Broadcasting's Washington news bureau, Tribune has ensured that the newscast reflects joint efforts between WSFL and the *Sun-Sentinel*.<sup>80</sup> WSFL has drawn on the rich and deep resources of the *Sun-Sentinel* to enrich and expand its local and regional news coverage. These benefits flow directly to the public, and would have been difficult if not impossible to attain absent common ownership with the *Sun-Sentinel* and Tribune's firm commitment to bringing news and public affairs programming to the public.

For example, public affairs programming and news presentations made available only because of the common ownership include:

*Hurricane coverage.* The *Sun-Sentinel* and WSFL have worked together to improve public safety in their coverage of preparation for hurricanes, and information about actual storms. WSFL has run 30-second public service spots produced by the *Sun-Sentinel* containing hurricane-preparedness updates that informed the South Florida community about necessary actions to take during the hurricane season. In addition, WSFL has run crawls tracking actual storms as they approached the area using data, information and copy available from the *Sun-Sentinel* to supplement its news and emergency broadcasts.

*"Kids of Character."* Kids of Character is a program sponsored by the *Sun-Sentinel* and WSFL that recognizes excellence in children from local schools. Every week during the school year, the Kids of Character program spotlights students who demonstrate strong moral character. In addition to the *Sun-Sentinel's* running a feature on these local children in the newspaper, WSFL features the children on its local news program. This Kids of Character Program ties directly into the character education programs developed by Broward and Palm Beach County schools. This *Sun-Sentinel*/WSFL partnership is a leading effort to honor kids who go above and beyond in exhibiting specific character

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<sup>80</sup> Tribune requested elimination of the "hold separate" requirement in 2000. As an unintended consequence of the requirement, WTVJ had used *Miami Herald* resources in the production of Tribune's newscast. The limitation was removed in August 2002. See *supra* at 2-3.

traits: kids who make a difference. These special stories are run in the *Sun-Sentinel* and profiled on WSFL's 10:00 p.m. newscast on a weekly basis.

*“Project Hope Worker’s Qualification Investigation.”* The *Sun-Sentinel* conducted an investigation into the qualifications and backgrounds of more than two dozen team leaders hired to provide crisis counseling in the aftermath of the hurricanes that hit Florida in 2005. WSFL was able to use *Sun-Sentinel* resources from the report to produce a December 2006 story on the results, which included the revelation that less than 25% of the counselors met the federal guidelines for a “mental health professional” and that one provider had a criminal background.

*“Project Hope Crisis Counseling Grants Investigation.”* The *Sun-Sentinel* conducted a three month investigation into the national post-disaster crisis counseling program funded by the Federal Emergency Management Agency. *Sun-Sentinel* personnel reviewed thousands of pages of reports from the Florida Department of Children and Families, and discovered that money was spent on puppet shows, Bingo games, and dancing lessons. While WSFL’s newscast otherwise would not have had the resources to conduct such a review, through access to the *Sun-Sentinel*’s resources, it was able to broadcast a story in October 2006 examining how the \$22 million dollars Florida received was spent.

*“AIDS Orphans in Haiti.”* The *Sun-Sentinel* spent months exploring the growing crisis of children in the Caribbean left orphaned by the AIDS-causing virus. WSFL was able to access a report that focused on an American couple working in Haiti to help a handful of the more than 300,000 Caribbean children left without parents because of AIDS, and broadcast a special report on the effort on World AIDS Day, December 1, 2006.

*“Overweight and Underage.”* *Sun-Sentinel* personnel spent more than seven months documenting the journey of a teenage boy struggling with morbid obesity, his decision to have gastric bypass surgery, and his life changes to ensure success after the surgery. Using the *Sun-Sentinel*’s resources on the story, WSFL was able to broadcast a story in February 2005 about the growing number of young people undergoing this procedure and the lack of information about its long-term health consequences on adolescents.

*“Beach Access.”* *Sun-Sentinel* reporters examined the entire Broward-Dade County coastline, and documented the areas where public access to the beach has become almost non-existent. WSFL’s newscast was able to provide a report in November of 2004 using this information, exploring private property rights and the value of maintaining public access to one of South Florida’s natural treasures.

*“Marine Mammals: Below the Surface.”* Using *Sun-Sentinel* resources, WSFL was able to provide a two-part series in May of 2004 revealing that thousands of captive mammals had died from causes including chlorine poisoning, heat



exposure, and capture shock and stress while in our nation's zoos and marine mammal attractions. The story reported on the problems with enforcement of regulations, veterinary care, feeding and accidents.

*"Alligator Farming."* In August of 2006, WSFL broadcast a two-part series on alligator farming in Florida, visiting an active alligator farm where alligators were raised for skin and meat, a tannery where hides were processed, and a retail shop where alligator skin products were sold. The report was enhanced by data obtained from *Sun-Sentinel* resources.

*McCormick Tribune Foundation Promotional Spots.* WSFL promotes *Sun-Sentinel* efforts on behalf of the McCormick Tribune Foundation raising money for South Florida's United Way agencies, Community Foundation, and Boys & Girls Clubs, as well as other charities serving battered women and the homeless.

These are specific examples of the news and public affairs programming made possible by the common ownership of WSFL and the *Sun-Sentinel*, enabling the station to improve its service to the public and the quality of its news programming.

### **III. Tribune Should Be Permitted to Own WSFL and the *Sun-Sentinel* Pending Completion of the Commission's Action on the *FNPRM*.**

Under the standard announced by the Commission in its *Notice of Inquiry* in 1998, a waiver pending a rulemaking is warranted "where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule."<sup>81</sup> Temporary relief pending the completion of rulemaking proceedings is particularly appropriate where the Commission can conclude that "the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity."<sup>82</sup> Tribune's ownership in South Florida easily complies with the cross-media limits adopted in 2003. Moreover, from the

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<sup>81</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

<sup>82</sup> *Id.*

facts set forth above, it is clear that the South Florida media marketplace is intensely competitive and diverse, and has not suffered harm as a result of Tribune's common ownership of WSFL and the *Sun-Sentinel* over the last nine years. Instead, viewers in the market benefit from the enhanced news and public affairs programming that this combined ownership has made possible *as the result of the FCC's grant of Tribune's current temporary waiver pending the rulemaking in this market*. Thus, Tribune is entitled to a temporary waiver of the Rule pending completion of the Commission's protracted proceeding resolving the *FNPRM*.

**A. A Substantial Record Exists In A Protracted Proceeding.**

As Tribune demonstrates in this waiver request, the protracted nature of this rulemaking proceeding – “where a substantial record exists on which to base a preliminary inclination to relax or eliminate” the Rule – is uncontroverted. Almost four years ago, the Commission adopted findings that resulted in its elimination of the Rule; those findings were based on two years of proceedings that included at least three rounds of comments, and the conduct of multiple studies and hearings. As the Third Circuit's opinion in *Prometheus* makes clear, the relaxation of the blanket prohibition on cross-ownership of newspapers and broadcast stations is not in doubt. The Commission adopted, and the court upheld, at least three salient rationales for its elimination and relaxation of the Rule. First, the Commission concluded that newspaper-broadcast combinations generally “cannot adversely affect competition in any relevant product market,” thus making the Rule no longer necessary to protect competition.<sup>83</sup> Second, the Commission held that newspaper-broadcast combinations promote the public interest by delivering more and better local coverage of news and public affairs, and that the

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<sup>83</sup> See 2003 Order, 18 FCC Rcd. at 13748-49, 13752-53, 13767.

Rule actually inhibits such programming and benefits.<sup>84</sup> Finally, the Commission found that the record in the proceeding did not support the conclusion that “common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming.”<sup>85</sup> The Third Circuit did not take issue with these findings and conclusions — they stand. The Commission would be acting arbitrarily and capriciously if, in the context of the instant waiver request, it ignored the conclusions it reached in its rulemaking proceeding, especially those findings upheld by the Third Circuit.

The protracted procedural posture of this case, where Tribune has sought and the Commission has promised appropriate relief for more than a decade, further demonstrates the appropriateness of the grant of a temporary waiver pending the conclusion of the rulemaking proceeding:

- \* More than ten years ago, in several adjudications, the Commission committed to commence a rulemaking regarding the Rule, with all Commissioners recognizing the public interest in relaxation of the rule.
- \* More than seven years ago, the Commission concluded in its *1998 Biennial Regulatory Review* that the Rule needed to be modified.
- \* In releasing its *2000 Biennial Regulatory Review*, the Commission confirmed this conclusion and in 2001, issued a Notice of Proposed Rulemaking to achieve this result.
- \* In 2003, the Commission, after extended proceedings, including rounds of comments, studies and hearings, made detailed findings that supported its conclusion that the Rule was no longer justifiable, and repealed the Rule, replacing it with specific cross-media limits that would permit Tribune’s common ownership of WSFL and the *Sun-Sentinel*.

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<sup>84</sup> *Id.* at 13753-54, 13756-57, 13759-60.

<sup>85</sup> *Id.* at 13767.

- \* In 2004, the Third Circuit affirmed the portion of the Commission's *2003 Order* that the blanket ban contained in the Rule should be repealed, but remanded the proposed new rules for further support or amendment.
- \* More than two years later, the Commission released its *FNPRM*, and despite a tentative conclusion not to revive the "diversity index" in its prior form, specifically asked whether it should retain the 2003 cross-media limits because they can be justified with additional evidence or analysis, or amend them.

The present case therefore involves the very type, indeed an almost perfect example, of the "protracted rulemaking proceeding" that the Commission envisioned warranting temporary relief for applicants; it is nothing like the situation where the Commission wished to avoid such interim relief requested based solely on the initiation of a quadrennial review.<sup>86</sup> Tribune's request for a temporary waiver pending completion of the Commission's *FNPRM* is much more than a request based on "the mere initiation of a proceeding stating that the rule would be examined, or merely the fact that such a proceeding was on the horizon."<sup>87</sup> As shown above, in extensive proceedings that have taken more than seven years, the Commission has adopted findings and conclusions that led it to repeal the Rule, and those findings were upheld by the Third Circuit.

**B. Tribune's Request is Within the Scope of the Adopted Rule.**

As part of this longstanding rulemaking proceeding, the Commission has adopted restrictions on the cross-ownership of broadcast stations and daily newspapers which, if effective, would permit the ownership combination that is the subject of Tribune's waiver request. The cross-media limits adopted to replace the Rule in the *2003 Order*, though stayed by the Third Circuit, would permit the common ownership of WSFL and the *Sun-Sentinel*, with a wide margin of comfort. Tribune can therefore demonstrate that its request for an interim waiver

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<sup>86</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

<sup>87</sup> *UTV of San Francisco, Inc.*, 16 FCC Rcd. 14975, 14988 (2001) *quoting Renaissance Communications*, 13 FCC Rcd. 4717, 4719 (1998).

pending the completion of these proceedings “falls within the scope of the proposals in the proceeding.”<sup>88</sup>

The Commission’s longstanding policy, recognized in the *Notice of Inquiry*, of providing temporary waivers where specific rules have been proposed in rulemakings that, if adopted, would provide relief, is consistent with sound law and policy. As Tribune demonstrates, having adopted rules in 2003 that would not require divestiture, the Commission should not and cannot now reasonably force divestiture of one of Tribune’s media properties without providing a reasoned basis for departing from the limits adopted in the *2003 Order*. As the Commission must recognize, the Rule survives only in a procedural posture: the Commission eliminated the Rule based on the conclusion that it no longer was justified in its 1975 form as the result of current media conditions. The Rule was replaced by cross-media limits that were stayed pending appeal, and which now await further action by the Commission after the Third Circuit’s decision in *Prometheus*.<sup>89</sup> The Rule now is in effect not because the Commission believes it continues to serve the public interest, but because the Commission’s action to scrap and scale back the Rule has taken years to complete. In such a procedural posture, the Commission traditionally has granted temporary waivers pending the completion of rulemaking proceedings, and should do so here, both to comport with the Commission’s findings upheld by the Third Circuit, and to serve the public interest against forcing the divestiture of WSFL pending the FCC’s conclusion of its longstanding rulemaking proceeding.<sup>90</sup>

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<sup>88</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294.

<sup>89</sup> *See supra* at 10-11.

<sup>90</sup> *Notice of Inquiry*, 13 FCC Rcd. at 11294; *see also National Exchange Carrier Association Petition To Amend Section 69.104*, 19 FCC Rcd. 13591 n.116 (2004) (“Grant of a waiver pending the result of a

**C. The Public Interest Would Be Served by the Temporary Waiver.**

The public interest would be disserved by Tribune's forced divestiture of WSFL or the *Sun-Sentinel*, and would be better served by continuation of the current ownership during the interim period in which the Commission resolves its proposal in the *FNPRM*.<sup>91</sup> Whether under the standard for an interim waiver pending a rulemaking or the fourth criterion for a waiver of the Rule under the 1975 standard – where, “*for whatever reason*, the purposes of the rule would be disserved”<sup>92</sup> – the Commission must grant waivers in precisely the kind of situation Tribune demonstrates here: where Tribune would comply with the proposed new rule and there is no diminution in the diversity of viewpoints in the market that has occurred or is likely to occur. Here, a waiver would foster the diversity of viewpoints and programming because the media marketplace in South Florida already is vibrant and diverse, and the combination of WSFL and the *Sun-Sentinel* has provided a new newscast and enhanced opportunities for news and public interest programming.

Indeed, the Commission has granted two *permanent* waivers of the Rule for common ownership of a newspaper and a television station in markets that, at the time, evidenced a media diversity to which South Florida is now comparable.<sup>93</sup> In both of these cases,

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rulemaking proceeding is consistent with Commission precedent”); *Administration of the North American Numbering Plan*, 20 FCC Rcd. 2957 (2005) (granting a waiver of a rule to permit obtaining numbering resources directly from NANPA after considering hardship and equities to SBC); *2000 Biennial Regulatory Review of Part 68*, 15 FCC Rcd. 10525 (2000) (recognizing public interest in grant of interim waivers in anticipation of completing rulemakings that will effectuate a change in the rules to accommodate innovations on a permanent basis).

<sup>91</sup> *See id.*; *1975 Order*, 50 F.C.C.2d at 1085.

<sup>92</sup> *Newspaper-Broadcast NPRM*, 16 FCC Rcd. at 17285 (emphasis added).

<sup>93</sup> *Fox Stations*, 8 FCC Rcd. 5341 (1993); *Field*, 65 F.C.C.2d 959 (1977). The Commission also has granted two permanent waivers of the Rule for the common ownership of a daily newspaper and a radio

the Commission recognized that the large television markets at issue, New York City and Chicago, were extremely competitive and diverse.<sup>94</sup> The South Florida market at issue here contains media competition and diversity similar to the New York City market analyzed in 1993 and the Chicago market analyzed in 1977.<sup>95</sup> In those instances, the Commission granted the applicants *permanent* waivers of the Rule, much greater relief than the temporary waiver sought by Tribune for approval of the transfer of its stock from public shareholders to participants in the ESOP Plan.<sup>96</sup> Indeed, the Commission should recognize that the diversity and competition in the South Florida market, the competitive position of WSFL as the seventh-ranked station in the Miami DMA, and the *Sun-Sentinel's* position in the South Florida market are important reasons

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station. See *Kortes Communications, Inc.*, 15 FCC Rcd. 11846 (2000); *Columbia Montour Broadcasting Co., Inc.*, 13 FCC Rcd. 13007 (1998).

<sup>94</sup> *Fox Stations*, 8 FCC Rcd. at 5351; *Field*, 65 F.C.C.2d at 959-60.

<sup>95</sup> In *Fox Stations*, the Commission analyzed the New York City television market as follows: “New York City itself is encompassed by the city-grade signals of at least 10 full-power television stations other than WNYW and it is the community of license of 24 AM and FM radio stations. Eight cable systems serve the five boroughs of New York City, providing between 28 and 78 channels. And New York, which has four general interest daily newspapers, is the only city in the nation to support more than two dailies. Moreover, 22 weekly newspapers, many of which cater primarily to local news, are published in the city. Given the wide array of voices in New York City, any detriment to diversity caused by common ownership of the two media outlets would be negligible, even if we look only to its full-service television stations and four dailies.” *Fox Stations*, 8 FCC Rcd. at 5351. In *Field*, the Commission concluded simply: “the markets in question are dominated by multiple owners and network affiliates and support numerous other media outlets.” *Field*, 65 F.C.C.2d at 959.

<sup>96</sup> In *Fox Stations*, the waiver was granted to ensure the continued survival of the *New York Post*. *Fox Stations*, 8 FCC Rcd. at 5345. In *Field*, the waiver was granted to provide for the reacquisition of a distressed broadcast station by the previous licensee, which also owned a daily newspaper in the market. *Field*, 65 F.C.C.2d at 959. In neither of these cases was the “catch-all” fourth criterion necessary – except for the fact that the Commission had cautioned that its grant of waivers under the first three criteria would not be of permanent duration, and it wanted to grant a permanent waiver in very diverse and competitive television markets.

that the Commission granted Tribune a temporary waiver for this market in 1998, and again afterwards.<sup>97</sup>

Tribune thus should receive a temporary waiver of the Rule pending completion of the *FNPRM* proceeding because the combination of WSFL and the *Sun-Sentinel* does not adversely alter the diversity or competitive nature of the market. As demonstrated extensively above, the South Florida market has only grown more diverse and competitive during the period of Tribune's common ownership of WSFL and the *Sun-Sentinel*. There are 19 television stations, 78 radio stations and numerous daily and weekly newspapers that serve the Miami DMA, not to mention the numerous independent voices available to consumers from the West Palm Beach DMA. There also are numerous other sources of news and information of local interest, including cable channels, satellite radio stations, weekly newspapers and magazines, and Internet websites. Furthermore, WSFL now provides a newscast as a result of the combination, and there are other public interest benefits in the form of increased and improved ability to provide news and public affairs programming on issues of local importance as a direct result of the common ownership of WSFL and the *Sun-Sentinel*.

Faced with these facts and its own conclusions, the Commission must grant Tribune a temporary waiver pending completion of the rulemaking. The Commission should be near the conclusion of its protracted proceeding to replace the Rule. The rule adopted in June 2003, with which Tribune would be in compliance, may be amended during the course of proceedings on the *FNPRM*, but the Commission has not yet articulated any basis for such a conclusion. Until the Commission articulates some reasoned basis for an alternative rule that is

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<sup>97</sup> See *supra* at 2-3.



consistent with the findings that resulted in the repeal of the Rule that was upheld by the Third Circuit, the Commission's articulated standards for a temporary waiver require that Tribune be granted such relief.

The Commission should recognize that under the principles enunciated in *RTNDA*, it cannot continue to enforce the Rule without careful analysis of its application, now that the rationale for the Rule in its present form has been expressly undercut, and where facts have been shown that warrant the grant of a temporary waiver under the standard set forth in the *Notice of Inquiry*.<sup>98</sup> In *RTNDA*, the D.C. Circuit concluded that, having conducted rulemakings in which it found that the rationales underlying the political editorial and personal attack rules no longer survived, the Commission could not continue to enforce the rules against its television licensees without further detailed and factual support. The Commission had years earlier concluded that the balancing of objectives underlying those rules no longer supported their continued application.

In the same way, the Commission has now recognized that the Rule in its present form disserves the public interest, and must, at a minimum, be replaced. Having adopted such a conclusion in 2003, as well as new limits with which Tribune complies, the Commission cannot now reasonably force divestiture of one of Tribune's media properties without providing a reasoned basis for departing from the findings made after careful analysis in the *2003 Order*.

Moreover, it would be arbitrary and capricious for Tribune to be denied a temporary waiver to own WSFL and the *Sun-Sentinel* when WSFL could be owned in common

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<sup>98</sup> *RTNDA*, 184 F.3d at 887.

with other market-leading television stations. At the time it adopted the Rule, the Commission justified its onerous restriction on the rights of newspaper owners by stating that owners of television and radio stations in the market also could not acquire a cross-ownership interest in another medium of mass communications.<sup>99</sup> The Commission already has liberalized almost all of its other broadcast ownership rules and their corresponding waiver policies in response to the same changes in the media marketplace that warrant revision of the Rule. Most specifically, the Commission relaxed the Rule's companion prohibition on combined ownership of television stations and radio stations in the same market (the "one-to-a-market rule").<sup>100</sup> At the same time that it relaxed the one-to-a-market rule, the Commission substantially revised the television "duopoly" rule, permitting the ownership of two television stations in the same market where at least eight independently owned stations would exist after the combination.<sup>101</sup> Both of these rules, which were in effect at the time of the adoption of the Rule in 1975, were adopted based on precisely the same rationale that underlies the Rule, and then substantially modified for precisely the same reasons that the Commission adopted when it modified the Rule.<sup>102</sup>

Nevertheless, absent the grant of the requested temporary waiver, Tribune, as a newspaper publisher, may be denied the right to broadcast in a market where its station could be acquired by the licensee of another television station in that market. Thus, the top-ranked television station in Miami could be commonly-owned with WSFL, and both stations could be

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<sup>99</sup> *1975 Order*, Reconsideration Order, 53 F.C.C.2d 589 (1975).

<sup>100</sup> *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd. 12903, 12947 (1999) ("*Television Ownership Order*").

<sup>101</sup> *Id.* at 12932.

<sup>102</sup> *See id.* at 2948-50.

programmed with a single “voice,” perhaps decreasing the amount of independent television broadcast news in the market. Tribune, however, would be prevented from independently programming WSFL and publishing the *Sun-Sentinel* in the same community. Such disparate treatment defies logic, and, consistent with the doctrine established in *Melody Music*,<sup>103</sup> no longer can be supported, especially where all Tribune seeks is a waiver pending the long-overdue completion of the six-year old Commission proceeding to revise the Rule (promised for more than a decade).

The Commission also must grant Tribune’s request for a temporary waiver of the Rule because the current application of the Rule in such circumstances violates Tribune’s First Amendment right to free speech and Fifth Amendment equal protection right. The restriction violates the equal protection component of the Fifth Amendment’s Due Process Clause because the Rule singles out and subjects newspaper owners such as Tribune to restrictions on speech that are not applied to other speakers, including other broadcast stations.<sup>104</sup> “Laws that single out the press, or certain elements thereof,” are subject to “heightened scrutiny.”<sup>105</sup> To survive scrutiny under this burden, discrimination among speakers “must be tailored to serve a substantial government interest.”<sup>106</sup> The Rule cannot survive such heightened scrutiny because

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<sup>103</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (requiring similar treatment of similarly situated FCC applicants and licensees).

<sup>104</sup> The Rule similarly discriminates against Tribune as a broadcaster, because cable networks can be commonly owned with newspapers and accumulate large numbers of other “voices” in ways that are unavailable to broadcasters.

<sup>105</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 640-41 (1994).

<sup>106</sup> *Police Department of Chicago v. Mosley*, 408 U.S. 92, 99 (1972); see also *Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 585, 592-93 (1983) (finding such differential regulation “presumptively unconstitutional” and that it “places a heavy burden on the [government] to justify its action”).

the burden of the restrictions on newspaper owners in contrast to other owners of “major media of mass communications” is no longer justifiable. While over 25 years ago the Supreme Court held that the regulations in question “treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications,”<sup>107</sup> today the speech of newspaper owners is singled out for unfavorable treatment in important ways not applicable to other owners of major media — cable television system owners, cable program networks, magazine publishers, or Internet website providers, for example. The Commission’s recent assessment of competition in the provision of video services, and its conclusions regarding the transformation of media over the past quarter-century, confirm that such media are “major media” free from the cross-ownership restriction.<sup>108</sup>

The Commission has found, on the basis of an extensive record, that prohibiting common ownership of broadcast stations and newspapers in the largest markets unnecessarily restricts speech and specifically is likely to result in less local news and public affairs programming. The Third Circuit upheld the Commission’s reasoning in these respects. Infringing Tribune’s speech rights is particularly unjustified where Tribune media properties’ market shares have declined during the period of common ownership, the Commission already has concluded that the risks to diversity are virtually non-existent, and application of the Rule would silence Tribune as a speaker in either television or newspaper publishing in South

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<sup>107</sup> *FCC v. NCCB*, 436 U.S. 775 (1978).

<sup>108</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, FCC 05-13, MB Docket No. 04-227 (released Feb. 4, 2005); see also *2003 Order*, 18 FCC Rcd. at 13647-67.

Florida.<sup>109</sup> To the extent that the Rule is overbroad or overly restrictive in achieving its goal, prohibiting more speech than is necessary to achieve its goals, application of the Rule and the thirty-year old waiver policy unnecessarily inhibits speech. To continue to apply the rule to Tribune in these circumstances cannot be justified, and the Commission must grant Tribune a temporary waiver to permit common ownership of WSFL and the *Sun-Sentinel* until its actions with respect to the *FNPRM* are final.

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<sup>109</sup> See 2003 Order, 18 FCC Rcd. at 13804-06. That the Third Circuit has called into question the precise basis for the Commission's line-drawing does not alter this conclusion. The Commission's conclusions regarding the harm to speech interests caused by the Rule are untouched, as are its conclusions regarding the competing sources of information.

### Appendix 1: Low Power Television Stations in the Miami-Fort Lauderdale DMA

Station	City	State	Channel	Ownership
W05CJ	Key West	FL	5	James Chladek
W10CQ	Key West	FL	10	James Chladek
W16CA	Big Pine Key	FL	16	WEYS Television Corp
W16CC	West Gate	FL	16	Mako Communications
W16CI*	Key West	FL	16	Prism Broadcasting Network Inc.
NEW	Key West	FL	18	Telecom Wireless LLC
WEYW-LP	Key West	FL	19	New Colonial Broadcasting LLC
NEW	Big Pine Key	FL	23	IBG, Inc..
W25DQ	Key West	FL	25	Prism Broadcasting Network Inc.
WIMP-CA	Miami	FL	25	D.T.V. LLC
WGZT-LP	Key West	FL	27	Global Broadcast Network Inc..
W28CP	Summerland Key	FL	28	Comunidad Misionera de Adoracion Inc.
NEW	Summerland Key	FL	29	Langer Broadcasting Group, LLC
W29CW	Duck Key	FL	29	Prism Broadcasting Network Inc.
WGEN-LP	Miami	FL	30	Cumbia Entertainment LLC
W31AB	Key West	FL	31	LPTV Inc.
WPMF-LP	Miami	FL	31	James Chladek
WCAY-LP	Key West	FL	34	Beach TV Properties
WVFW-LP	Miami	FL	34	Benavides, Gerald G.
W38AA	Marathon	FL	38	Cumbia Entertainment LLC
W39AC	Key West	FL	39	Cumbia Entertainment LLC
W40AA	Matecumbe	FL	40	Cayo Hueso Networks, LLC
WGAY-LP	Key West	FL	41	Paradise TV LLC
WJAN-CA	Miami	FL	41	Sherjan Broadcasting Company Incorporated
NEW	Summerland Key	FL	42	Langer Broadcasting Group, LLC
W43AD	Matecumbe	FL	43	WEYS Television Corp
W43CB	Matecumbe	FL	43	Ministerio Oscar Aguero Inc.
W44AC	Key West	FL	44	Miranda Broadcasting Co. of Key West LLC
W47AC	Big Pine Key	FL	47	WEYS Television Corp
W48DE*	Islamorada	FL	48	WEYS Television Corp
WDFL-LP	Marathon	FL	48	Paramount Broadcasting Communications LLC
WFUN-LP	Miami	FL	48	CaribeVision Station Group LLC
WKIZ-LP	Key West	FL	49	WEYS Television Corp
NEW	Summerland Key	FL	50	Langer Broadcasting Group, LLC
WSBS-CA	Miami	FL	50	Spanish Broadcasting System
WLMF-LP	Miami	FL	53	Paging Associates Inc.
WEYS-LP	Miami	FL	56	AlmaVision Hispanic Network
W57AM	Big Pine Key	FL	57	WEYS Television Corp

Station	City	State	Channel	Ownership
W64AN	Rock Harbor	FL	64	Cumbia Entertainment LLC
W64CX*	Marathon	FL	64	Lawrence Howard Mintz
<b>Sources:</b> BIA Financial Network, Federal Communications Commission ( <a href="http://www.fcc.gov">www.fcc.gov</a> ), and Warren Television and Cable Factbook: Online ( <a href="http://warren.365media.com">warren.365media.com</a> ) Current as of April 24, 2007				
* Off the air; construction permit applied for ** Licensed and silent				

## Appendix 2: Low Power Television Stations in the West Palm Beach-Fort Pierce, FL DMA

Station	City	State	Channel	Owner
WFPI-LP	Fort Pierce	FL	8	Equity Broadcasting Corporation
WWCI-CA	Vero Beach	FL	10	V1 Productions Inc
W31DC*	Fort Pierce	FL	31	Barry Telecommunications Inc.
WSLF-LP	Port St. Lucie	FL	35	Equity Broadcasting Corporation
WBPD-LP	West Palm Beach	FL	41	Willpower TV
WTCN-CA	Palm Beach	FL	43	Cerberus Capital Management LP
W44AY	Fort Pierce	FL	44	Barry Telecommunications Inc.
WWHB-CA	Stuart	FL	48	Cerberus Capital Management LP
WWJV-LP	Jupiter	FL	53	Spirit Productions, Inc.
WBWP-LP	West Palm Beach	FL	57	H&R Production Group LLC
WMMF-LP	Vero Beach	FL	57	Pappas Telecasting Companies
<b>Sources:</b> Federal Communications Commission ( <a href="http://www.fcc.gov">www.fcc.gov</a> ), BIA Financial Network, and Warren Television and Cable Factbook: Online ( <a href="http://warren.365media.com">warren.365media.com</a> ) Current as of April 25, 2007				
* Off the air; construction permit applied for				



### Appendix 3: AM and FM Radio Stations in the Miami-Fort Lauderdale DMA

Call sign	AM/FM	Community of License	Owner	Format
WACC	AM	Hialeah, FL	Radio Peace Catholic Broadcasting	Span/Chrst
WAFG	FM	Fort Lauderdale, FL	Westminster Academy	Christian
WAIL	FM	Key West, FL	Clear Channel	Clsc Rock
WAMR	FM	Miami, FL	Univision	Span/AdCHR
WAQI	AM	Miami, FL	Univision	Spn/Nws/Tlk
WAVK	FM	Marathon, FL	Vox Media Corporation	Hot AC
WAVS	AM	Davie, FL	Alliance Broadcasting Network Inc.	Tropical
WAXY	AM	South Miami, FL	Lincoln Financial Media	Sports
WAZQ	FM	Key West, FL	Educational Public Radio Inc.	Variety
WBGG	FM	Fort Lauderdale, FL	Clear Channel	Clsc Rock
WCMQ	FM	Hialeah, FL	Spanish Broadcasting System	Span/Oldes
WCNK	FM	Key West, FL	Vox Media Corporation	Country
WCTH	FM	Plantation Key, FL	Clear Channel	Country
WDNA	FM	Miami, FL	Bascomb Memorial Broadcasting Foundation	Jazz
WEDR	FM	Miami, FL	Cox Radio Inc.	Urban
WEOW	FM	Key West, FL	Clear Channel	Top 40
WEXY	AM	Wilton Manors, FL	Multicultural Radio Broadcasting Inc.	Religion
WFFG	AM	Marathon, FL	Great Marathon Radio	Talk
WFKZ	FM	Plantation Key, FL	Clear Channel	Clsc Hits
WFLC	FM	Miami, FL	Cox Radio Inc.	AC
WFLI	AM	Fort Lauderdale, FL	James Crystal Enterprises	Sports
WGES	FM	Key Largo, FL	Genesis Group LLC	Span/CCtmp
WGMX	FM	Marathon, FL	Great Marathon Radio	AC
WHDR	FM	Miami, FL	Cox Radio Inc.	Rock
WHQT	FM	Coral Gables, FL	Cox Radio Inc.	Urban AC
WHSR	AM	Pompano Beach, FL	Beasley Broadcast Group	Internat'l
WHYI	FM	Fort Lauderdale, FL	Clear Channel	CHR
WIIS	FM	Key West, FL	Keyed Up Communications Company	Alternative
WINZ	AM	Miami, FL	Clear Channel	Talk
WIOD	AM	Miami, FL	Clear Channel	News/Talk
WIRP	FM	Pennsuco, FL	Genesis Group LLC	Span/Chrst

<b>Call sign</b>	<b>AM/FM</b>	<b>Community of License</b>	<b>Owner</b>	<b>Format</b>
WJIR	FM	Key West, FL	Key West Educational Broadcasting Foundation	AC
WKAT	AM	North Miami, FL	Salem Communications Corporation	News/Talk
WKEY	FM	Key West, FL	Clear Channel	AC
WKEZ	FM	Tavernier, FL	Clear Channel	Easy
WKIZ	AM	Key West, FL	Seattle Streaming Radio LLC	Pgv/Tlk/Cst
WKLG	FM	Rock Harbor, FL	Broward County School Board	Alternative
WKPX	FM	Sunrise, FL	Spottswood Partners Ltd	Sports
WKWF	AM	Key West, FL	Broadcasting For The Challenged Inc.	ChrsContemp
WKWR	FM	Key West, FL	Key West Educational Broadcasting Foundation	AC
WKYZ	FM	Key Colony Beach, FL	Glades Media Company	Clsc Rock
WLQY	AM	Hollywood, FL	Entravision Holdings LLC	Ethnic
WLRN	FM	Miami, FL	Miami/Dade, FL County School Board	Nws/Tlk/Inf
WLVE	FM	Miami Beach, FL	Clear Channel	Smooth Jazz
WLYF	FM	Miami, FL	Lincoln Financial Media	AC
WMBM	AM	Miami Beach, FL	New Birth Broadcasting Corp	Gospel
WMCU	FM	Miami, FL	Trinity Evangelical Divinity School	AC/Chrst
WMFL	FM	Florida City, FL	Family Stations Inc.	Religion
WMFM	FM	Key West, FL	South Broadcasting System	Span/Varty
WMGE	FM	Miami Beach, FL	Clear Channel	Urban CHR
WMIB	FM	Fort Lauderdale, FL	Clear Channel	Hip Hop
WMKL	FM	Key Largo, FL	Call Communications Group Inc.	Christian
WMXJ	FM	Pompano Beach, FL	Lincoln Financial Media	Oldies
WMYM	AM	Miami, FL	ABC/Disney	Children
WNMA	AM	Miami Springs, FL	Multicultural Radio Broadcasting Inc.	Span/Varty
WOCN	AM	Miami, FL	Independence Media Holdings LLC	News/Talk
WOIR	AM	Homestead, FL	Amanecer Christian Network Inc.	Spn/Tlk/Var

<b>Call sign</b>	<b>AM/FM</b>	<b>Community of License</b>	<b>Owner</b>	<b>Format</b>
WPIK	FM	Summerland Key, FL	Summerland Media LLC	Span/Easy
WPOW	FM	Miami, FL	Beasley Broadcast Group	Rhymc/CHR
WQAM	AM	Miami, FL	Beasley Broadcast Group	Sprts/Talk
WQBA	AM	Miami, FL	Univision	Spn/Nws/Tlk
WRGP	FM	Homestead, FL	Florida International University	Variety
WRHB	AM	Kendall, FL	New World Broadcasting Inc.	Ethnic
WRHC	AM	Coral Gables, FL	Rodriguez, Jorge & Vidal	Spn/Nws/Tlk
WRMA	FM	Fort Lauderdale, FL	Spanish Broadcasting System	Span/BtfMs
WRTD	FM	Goulds, FL	Univision	SpnAC/Trpcl
WSRF	AM	Fort Lauderdale, FL	Alliance Broadcasting Network Inc.	Ethnic
WSUA	AM	Miami, FL	El Dorado Broadcasting Corp	Spn/Nws/Var
WTPS	AM	Coral Gables, FL	Radio One Inc..	News/Talk
WVUM	FM	Coral Gables, FL	WVUM Inc..	Alternative
WWFE	AM	Miami, FL	Rodriguez, Jorge & Vidal	Spn/Spt/Nws
WWNN	AM	Pompano Beach, FL	Beasley Broadcast Group	Motivationl
WWUS	FM	Big Pine Key, FL	Vox Media Corporation	CIHts/70&80
WWWK	FM	Marathon, FL	LSM Radio Partners	Oldies
WXDJ	FM	North Miami Beach, FL	Spanish Broadcasting System	Span/Trpcl
WZMQ	FM	Key Largo, FL	South Broadcasting System	Span/Varty
<b>Sources:</b> BIA Financial Network, Federal Communications Commission ( <a href="http://www.fcc.gov">www.fcc.gov</a> ) Current as of April 24, 2007				

**Appendix 4: AM and FM Radio Stations in the West Palm Beach-Fort Pierce, FL DMA**

<b>Call sign</b>	<b>AM/FM</b>	<b>Community of License</b>	<b>Owner</b>	<b>Format</b>
WAVW	FM	Stuart, FL	Clear Channel	Country
WAYF	FM	West Palm Beach, FL	WAY FM Media Group Inc.	ChrsContemp
WBGF	FM	Belle Glade, FL	BGI Broadcasting LP	Country
WBZT	AM	West Palm Beach, FL	Clear Channel	Talk
WCNO	FM	Palm City, FL	National Christian Network	ChrsContemp
WCZR	FM	Vero Beach, FL	Clear Channel	Talk
WDJA	AM	Delray Beach, FL	The Betty Ginsburg Revocable Trust	Bus News
WEAT	FM	West Palm Beach, FL	CBS Radio	Soft AC
WEFL	AM	Tequesta, FL	Good Karma Broadcasting	Sports
WFLM	FM	White City, FL	Midway Broadcasting Co.	Urban AC
WFTL	AM	West Palm Beach, FL	James Crystal Enterprises	BusNw/Sprts
WGYL	FM	Vero Beach, FL	Treasure and Space Coast Radio	AC
WHLG	FM	Port St. Lucie, FL	Vernon D. Smith	AC
WIRA	AM	Fort Pierce, FL	Team One Media LLC	Gospl/Talk
WIRK	FM	West Palm Beach, FL	CBS Radio	Country
WJFP	FM	Fort Pierce, FL	Black Media Works Inc.	Black Gospl
WJKD	FM	Vero Beach, FL	Treasure and Space Coast Radio	Jack
WJNO	AM	West Palm Beach, FL	Clear Channel	News/Talk
WJNX	AM	Fort Pierce, FL	Port St. Lucie Broadcasters Inc.	Span/Talk
WKGR	FM	Fort Pierce, FL	Clear Channel	Clsc Rock
WKIS	FM	Boca Raton, FL	Beasley Broadcast Group	Country
WLDI	FM	Fort Pierce, FL	Clear Channel	CHR
WLVJ	AM	Boynton Beach, FL	Communicom	Religion
WMBX	FM	Jensen Beach, FL	CBS Radio	Hip Hop
WMEN	AM	Royal Palm Beach, FL	James Crystal Enterprises	Talk
WMNE	AM	Riviera Beach, FL	ABC/Disney	Children
WNEW	FM	Jupiter, FL	CBS Radio	Urban AC
WOKC	AM	Okeechobee, FL	Glades Media Company	Country
WOLL	FM	Hobe Sound, FL	Clear Channel	AC
WOSN	FM	Indian River Shores, FL	Treasure and Space Coast Radio	Adlt Stndrd
WPBR	AM	Lantana, FL	Omnilingual Broadcasting	News/Talk
WPBZ	FM	Indiantown, FL	CBS Radio	Altve/Rock

Call sign	AM/FM	Community of License	Owner	Format
WPSL	AM	Port St. Lucie, FL	Port St. Lucie Broadcasters Inc.	Nws/Tlk/Spt
WPSP	AM	Royal Palm Beach, FL	Q Broadcasting Corporation Inc.	Spanish AC
WQCS	FM	Fort Pierce, FL	Indian River Community College	NPR/Clscl
WQOL	FM	Vero Beach, FL	Clear Channel	Oldies
WREH	FM	Cypress Quarters, FL	Reach Communications Inc.	Religion
WRLX	FM	West Palm Beach, FL	Clear Channel	Soft AC
WRMB	FM	Boynton Beach, FL	Moody Bible Institute of Chicago Inc..	Christian
WRMF	FM	Palm Beach, FL	Palm Beach Broadcasting LLC	AC
WSBR	AM	Miramar Beach, FL	Beasley Broadcast Group	Bus News
WSCF	FM	Vero Beach, FL	Central Educational Broadcasting	ChrsContemp
WSJZ	FM	Sebastian, FL	Cumulus Broadcasting Inc.	Rock
WSTU	AM	Stuart, FL	Port St. Lucie Broadcasters Inc.	BusNw/Sprts
WSVU	AM	North Palm Beach, FL	Intermart Broadcasting	Adlt Stndrd
WSWN	AM	Belle Glade, FL	BGI Broadcasting LP	Urban/Gospl
WSYR	FM	Gifford, FL	Clear Channel	Hot AC
WTTB	AM	Vero Beach, FL	Treasure and Space Coast Radio	Talk
WWFR	FM	Stuart, FL	Family Stations Inc.	Religion
WWRF	AM	Lake Worth, FL	Radio Fiesta Inc.	Mexican
WXEL	FM	West Palm Beach, FL	WXEL Public Broadcasting Corporation	Clscl/NPR
WZTA	AM	Vero Beach, FL	Clear Channel	Talk
WZZR	FM	Riviera Beach, FL	Clear Channel	Talk
<b>Sources:</b> BIA Financial Network, Federal Communications Commission ( <a href="http://www.fcc.gov">www.fcc.gov</a> ) Current as of April 25, 2007				

### Appendix 5: Satellite Radio Stations in the Miami-Fort Lauderdale Market

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 4	The 40s	Big Band/Swing/40s Hits	Ch. 1	SIRIUS Hits 1	Top 40 Hits
Ch. 5	The 50s	50s Hits	Ch. 2	StarLite	Lite Pop
Ch. 6	The 60s	60s Hits	Ch. 3	SIRIUS Love	Love Songs
Ch. 7	The 70s	70s Hits	Ch. 4	Movin' Easy	Easy Listening
Ch. 8	The 80s	80s Hits	Ch. 5	SIRIUS Gold	The '50s
Ch. 9	The 90s	90s Hits	Ch. 6	'60s Vibrations	The '60s
Ch. 10	America	Classic Country	Ch. 7	Totally '70s	The '70s
Ch. 11	Nashville, Regional News and Talk	90s & Today Country	Ch. 8	Big '80s	The '80s
Ch. 12	X Country	Americana	Ch. 9	The Pulse	The '90s & Now
Ch. 13	Willie's Place	Traditional Country	Ch. 10	The Bridge	Mellow Rock
Ch. 14	Bluegrass Junction	Bluegrass	Ch. 11	BBC Radio 1	New Music from the U.K.
Ch. 15	The Village	Folk	Ch. 12	Super Shuffle	SIRIUS Super Mix
Ch. 16	Highway 16	New Country Hits	Ch. 13	Elvis Radio	All Elvis Presley
Ch. 17	US Country	Superstar Country Hits of 80's and 90's	Ch. 14	Classic Vinyl	Early Classic Rock
Ch. 20	Top 20 on 20	Top 20 Hits	Ch. 15	Classic Rewind	Later Classic Rock
Ch. 21	KISS	Contemporary Hits	Ch. 16	The Vault	Deeper Classic Rock
Ch. 22	Mix	Modern Adult Hits	Ch. 17	Jam_ON	Jam Bands
Ch. 23	The Heart	All Love Songs 24/7	Ch. 18	The Spectrum	Adult Album Rock
Ch. 24	Sunny	Soft Pop Oldies	Ch. 19	Buzzsaw	Classic Hard Rock
Ch. 26	Flight 26	Modern Hits 90s & Now	Ch. 20	Octane	Pure Hard Rock
Ch. 27	Cinemagic	Movie Soundtracks	Ch. 21	Alt Nation	Alternative Rock

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 28	On Broadway	Show Tunes	Ch. 22	First Wave	Classic Alternative
Ch. 29	U-Pop	Global Chart Hits	Ch. 23	Hair Nation	80s Hair Bands
Ch. 30	XM HitList	Today's Hits	Ch. 24	Lithium	90s Alternative
Ch. 32	The Message	Christian Pop & Rock	Ch. 25	Underground Garage	Garage Rock
Ch. 33	Spirit	Gospel	Ch. 26	Left of Center	New/College/Indie Rock
Ch. 34	enLighten	Southern Gospel	Ch. 27	Hard Attack	Heavy Metal
Ch. 40	Deep Tracks	Deep Album Rock	Ch. 28	Faction	Punk, Hip-Hop, Hard Rock Mix
Ch. 41	Boneyard	Hard Rock/Hairbands – XL	Ch. 29	Punk	Punk Rock
Ch. 42	Liquid Metal	Heavy Metal – XL	Ch. 30	The Coffee House	Singer-Songwriters and Acoustic
Ch. 43	XMU	Indie/College Rock	Ch. 31	Radio Margaritaville	Escape to Margaritaville
Ch. 44	Fred	Classic Alternative	Ch. 32	Reggae Rhythms	Reggae
Ch. 45	XM Café	Soft Alternative	Ch. 33	Area 33	Trance & Progressive House
Ch. 46	Top Tracks	Classic Rock	Ch. 34	Boombox	Breakbeats/Old Skool
Ch. 47	Ethel	Modern Rock	Ch. 35	Chill	Smooth Electronic
Ch. 48	Squizz	Hard Alternative – XL	Ch. 36	The Beat	Dance Hits
Ch. 49	Big Tracks	Later Classic Rock	Ch. 37	The Strobe	Disco/Classic Dance
Ch. 50	The Loft	Acoustic Rock	Ch. 40	Hip-Hop Nation	Non-stop Hip-Hop 24/7
Ch. 52	The Verge	New/Emerging Artists	Ch. 43	BackSpin	Old Skool Rap
Ch. 53	Fungus	Punk/Hardcore/Ska – XL	Ch. 45	Shade 45	Shady's Uncut Hip-Hop
Ch. 54	Lucy	Modern Rock Hits	Ch. 50	Hot Jamz	Hip-Hop and R&B Hits

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 60	Soul Street	Classic Soul	Ch. 51	Heart & Soul	R&B Hits
Ch. 62	Suite 62	Adult R&B Hits	Ch. 53	Soul Town	Hip-Hop/R&B
Ch. 64	The Groove	Old Skool R&B	Ch. 60	New Country	Today's Country Hits
Ch. 65	The Rhyme	Snoop Dogg's Classic Hip/Hop/Rap – XL	Ch. 61	Prime Country	'80s & '90s Country Hits
Ch. 66	RAW	New Uncut Hip-Hop – XL	Ch. 62	The Roadhouse	Classic Country
Ch. 67	The City	Urban Contemporary	Ch. 63	Outlaw Country	Outlaw country
Ch. 68	The Heat	Rhythmic Top 40	Ch. 65	Bluegrass	Bluegrass
Ch. 70	Real Jazz	Traditional Jazz	Ch. 66	Spirit	Christian Hits
Ch. 71	Watercolors	Smooth Jazz	Ch. 68	Praise	Gospel
Ch. 72	Beyond Jazz	Modern Jazz	Ch. 70	Planet Jazz	Contemporary Jazz
Ch. 73	High Standards	American Standards	Ch. 71	Jazz Café	Smooth Jazz
Ch. 74	Bluesville	Blues	Ch. 72	Pure Jazz	Classic Jazz
Ch. 75	Hear Music	The Voice of Music at Starbucks	Ch. 73	Spa 73	New Age
Ch. 76	Fine Tuning	Eclectic	Ch. 74	SIRIUS Blues	Blues
Ch. 77	Audio Visions	New Age	Ch. 75	Standard Time	Standards/ Swing
Ch. 78	Escape	Easy Listening	Ch. 77	Broadway's Best	Broadway Show Music
Ch. 80	The Move	Underground Dance	Ch. 80	Symphony Hall	Symphonic and Chamber Music
Ch. 81	BPM	Dance Hits	Ch. 85	Metropolitan Opera Radio	Opera
Ch. 82	The System	Electronica	Ch. 86	SIRIUS Pops	Classical Pops
Ch. 83	Chrome	Disco	Ch. 90	Universo Latino	Latin Pop Mix
Ch. 84	XM-Chill	Chill Music	Ch. 92	Rumbon	Reggaeton/Tropical
Ch. 90	Fuego	Reggaeton	Ch. 93	bande a part	New French-language Music



XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 91	Viva	Latin Pop Hits	Ch. 94	CBC Radio 3	Canadian Indie Music
Ch. 92	Aguila	Regional Mexican	Ch. 95	Iceberg Radio	Canadian Adult Alternative
Ch. 94	Caliente	Tropical	Ch. 97	Reggae Rhythms	Reggae
Ch. 100	Air Musique	New & Emerging Music – Broadcast in French	Ch. 100	Howard 100	Howard Stern
Ch. 101	The Joint	Reggae	Ch. 101	Howard 101	Howard Stern
Ch. 102	Sur La Route	Pop Hits Broadcast in French	Ch. 102	SIRIUS Stars	The SIRIUS Difference
Ch. 110	XM Classics	Traditional Classical	Ch. 103	Blue Collar Comedy	All-American Comedy with universal appeal
Ch. 112	Vox	Opera/ Classical Vocals	Ch. 104	Raw Dog	Comedy Uncensored
Ch. 113	XM Pops	Popular Classical	Ch. 105	Laugh Break	Comedy
Ch. 115	Radio Disney	Radio Disney	Ch. 106	The Foxxhole	Comedy
Ch. 116	XM Kids	Children	Ch. 107	E! Entertainment Radio	E! Entertainment Radio
Ch. 120	XM Live	Concerts/ Festivals/ Special Features	Ch. 108	Maxim Radio	Maxim Radio
Ch. 121	FOX News	FOX News	Ch. 109	SIRIUS OutQ	America's GLBT Radio Station
Ch. 122	CNN	CNN News	Ch. 110	Court TV Radio	Court TV Radio
Ch. 123	CNN Headline News	CNN Headline News	Ch. 111	Cosmo Radio	Cosmo Radio
Ch. 124	ABC News & Talk	ABC News & Talk	Ch. 112	Martha Stewart Living Radio	How-to and homekeeping
Ch. 125	The Weather Channel	The Weather Channel	Ch. 114	LIME	Healthy living with a twist
Ch. 126	CNN en Español	CNN in Spanish	Ch. 115	Radio Disney	Radio Disney

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 127	CNBC	CNBC	Ch. 116	Kids Stuff	Kids
Ch. 129	Bloomberg Radio/Business	Bloomberg Radio/Business	Ch. 118	RadioClassics	Classic Radio Shows
Ch. 131	BBC World Service	BBC World Service	Ch. 119	Sports Play-by-Play 4	Play-by-Play
Ch. 132	C-SPAN Radio	C-SPAN Radio	Ch. 120	ESPN Radio	ESPN Radio
Ch. 133	XM Public Radio	XM Public Radio	Ch. 121	ESPNEWS	ESPN News
Ch. 140	ESPN Radio	Sports	Ch. 122	Sports Play-by-Play 1	Sports Talk and Play-by-Play
Ch. 141	ESPNEWS	The Definitive 24-hour Sports News Network	Ch. 123	SIRIUS Sports Action	Sports Talk and Play-by-Play
Ch. 142	FOX Sports Radio	Sports Talk	Ch. 124	SIRIUS NFL Radio	Nonstop NFL Talk
Ch. 143	XM Sports Guide	Sports	Ch. 125	Sports Play-by-Play 2	Play-by-Play
Ch. 144	XM Sports Nation	Sports	Ch. 126	Sports Play-by-Play 3	Play-by-Play
Ch. 145	IndyCar Series Racing	IndyCar Series Racing	Ch. 127	NBA Radio on SIRIUS	NBA Radio on SIRIUS
Ch. 146	PGA TOUR Network	Golf Talk	Ch. 128	SIRIUS NASCAR Radio	24/7/365 NASCAR
Ch. 147	XM Deportivo	Spanish Sports Talk	Ch. 129	CNBC	CNBC
Ch. 150	XM Comedy	Uncensored Comedy – XL	Ch. 130	Bloomberg Radio	Bloomberg Radio
Ch. 151	Laugh USA	Comedy	Ch. 131	Fox News Channel	Fair and Balanced News
Ch. 152	Extreme XM	Extreme Talk	Ch. 132	CNN	The Most Trusted Name in News
Ch. 153	Laugh Attack	Uncensored Comedy –XL	Ch. 133	CNN Headline News	CNN Headline News
Ch. 154	National Lampoon Comedy Radio	Comedy	Ch. 134	NPR Now	NPR Now
Ch. 155	Take Five	Women’s Talk & Lifestyle	Ch. 135	NPR Talk	NPR Talk
Ch. 156	Oprah & Friends	Oprah & Friends	Ch. 137	CBC Radio One	National/International News

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 161	WSIX	Nashville Country	Ch. 138	Premiere Plus	Canadian Current Affairs
Ch. 162	E! Entertainment Radio	Entertainment	Ch. 139	C-SPAN Radio	C-SPAN Radio
Ch. 163	Sonic Theater	Books & Drama	Ch. 140	World Radio Network	News Around the World
Ch. 164	Radio Classics	Old Time Radio	Ch. 141	BBC World Service News	BBC World Service News
Ch. 165	Talk Radio	Experts Talk	Ch. 143	ABC News & Talk	ABC News & Talk
Ch. 166	America Right	Conservative Talk	Ch. 144	SIRIUS Patriot	Conservative Values
Ch. 167	Air America Radio	Progressive Talk	Ch. 145	Fox News Talk Channel	FOX News Talk
Ch. 168	FOX News Talk	FOX News Talk	Ch. 146	SIRIUS Left	Liberal Talk
Ch. 169	The Power	African-American Talk	Ch. 147	Road Dog Trucking	Talk for Truckers
Ch. 170	FamilyTalk	Christian Talk	Ch. 153	Miami/Atlanta	Traffic & Weather
Ch. 171	Open Road	Truckers' Channel	Ch. 159	The Catholic Channel	The Catholic Channel
Ch. 172	Sport Plus	Men's Lifestyle and Sports Talk - Broadcast in French	Ch. 160	EWTN Global Catholic Network	EWTN Radio Catholic Network
Ch. 173	WLW	News Talk	Ch. 161	Christian Talk	Christian Talk
Ch. 174	MLB Play by Play en Español	Play-by-Play MLB Action en Español	Ch. 181	ESPN Deportes	ESPN Deportes Radio
Ch. 175	MLB Home Plate	24/7 Major League Baseball Channel	Ch. 182	CNN En Español	CNN En Español
Ch. 176	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 183	Radio Korea	Korean Language Radio
Ch. 177	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 184	SIRIUS Weather & Emergency	SIRIUS Weather & Emergency

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 178	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 185	Canada Weather	Canada Weather
Ch. 179	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 187	Info Plus	All News Radio
Ch. 180	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 188	RCI Plus	International Talk
Ch. 181	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 192	Rock Velours	Canadian Soft Rock
Ch. 182	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 193	Energie 2	Pop, Rock & Urban Music
Ch. 183	MLB Play-by-Play	Play-by-Play MLB Action	Ch. 198	Playboy Radio	Smart, sexy and sophisticated programming
Ch. 184	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 185	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 186	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 187	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 188	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 189	MLB Play-by-Play	Play-by-Play MLB Action			
Ch. 190	College Sports-ACC	ACC Sports			
Ch. 191	College Sports-ACC	ACC Sports			
Ch. 192	College Sports-ACC	ACC Sports			
Ch. 193	College Sports-PAC-10	PAC-10 Sports			
Ch. 194	College Sports-PAC-10	PAC-10 Sports			
Ch. 195	College Sports-PAC-10	PAC-10 Sports			
Ch. 196	College Sports-Big 10	Big Ten Sports			
Ch. 197	College Sports-Big 10	Big Ten Sports			
Ch. 198	College Sports-Big 10	Big Ten Sports			

XM Satellite Radio			Sirius Satellite Radio		
Channel Number	Channel Name	Description	Channel Number	Channel Name	Description
Ch. 199	College Sports-SEC	SEC Sports			
Ch. 200	College Sports-SEC	SEC Sports			
Ch. 201	College Sports-SEC	SEC Sports			
Ch. 202	The Virus	Opie & Anthony! – XL			
Ch. 203	College Sports-Big East	Big East Sports			
Ch. 204	Home Ice	NHL Talk and Play-by-Play			
Ch. 205	Home Ice	NHL Talk and Play-by-Play			
Ch. 206	Home Ice	NHL Talk and Play-by-Play			
Ch. 207	Home Ice	NHL Talk and Play-by-Play			
Ch. 208	Home Ice	NHL Talk and Play-by-Play			
Ch. 209	Home Ice	NHL Talk and Play-by-Play			
Ch. 230	Miami/Fort Lauderdale, FL	Local Traffic and Weather			
Ch. 243	ReachMD	Channel for Healthcare Professionals			
Ch. 244	Canada 360	News & Information			
Ch. 245	Quoi de Neuf	News & Information in French			
Ch. 247	XM Emergency Alert 24/7	24/7 Emergency Information			
<b>Sources:</b> XM Radio, Sirius Satellite Radio Current as of April 20, 2007					

**Appendix 6 - Daily Circulation History 2001-2005 for Newspapers Located in  
Miami-Ft. Lauderdale and West Palm Beach DMAs**

Newspaper	Home City	State	County	Owner	Daily Circulation					% Change
					2001	2002	2003	2004	2005	2001-2005
El Nuevo Herald	Miami	FL	Miami-Dade	McClatchy Newspapers Inc.	86,555	88,024	88,322	88,780	85,534	-1.2%
Key West Citizen	Key West	FL	Monroe	Cooke Communications LLC	9,996	8,263	8,207	8,427	8,446	-15.5%
Miami Herald, The	Miami	FL	Miami-Dade	McClatchy Newspapers Inc.	304,938	303,575	304,795	306,943	291,198	-4.5%
South Florida Sun-Sentinel	Fort Lauderdale	FL	Broward	Tribune Co.	251,970	215,355	218,306	218,781	227,294	-9.8%
Tamarac/North Lauderdale Forum	Tamarac	FL	Broward	Forum Communications Co.	0	0	0	0	0	NA
Boca Raton News	Boca Raton	FL	Palm Beach	Swill, Craig	0	0	0	0	0	NA
Okeechobee News	Okeechobee	FL	Okeechobee	Independent Newspaper Inc. (FL)	0	3,800	3,800	3,800	0	NA
Palm Beach Post, The	West Palm Beach	FL	Palm Beach	Cox Newspapers	171,607	154,981	154,489	154,786	154,800	-9.8%
Treasure Coast News/Press-Tribune	Vero Beach	FL	Indian River	EW Scripps Co.	32,712	91,327	92,257	94,805	94,979	190.3%